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# Perception and Reality: An Exploration of Domestic Abuse Victims' Experiences of the Criminal Justice Process in Scotland

Emma Elizabeth Forbes

L.L.B (Hons), Dip. L.P., MSc (distinction)



Submitted in fulfilment of the requirements of the University of Glasgow for the  
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## ABSTRACT

This thesis is a feminist critique of Scotland's investigation and prosecution of domestic abuse through the lens of tackling domestic abuse as a gendered offence. It tells two stories: Scotland's policy and legislative response to this issue and the experience of female victims who report domestic abuse to the police. The apparent sweep of progress on the public stage is juxtaposed with the private struggle of individuals who continue to face barriers to justice. Drawing on in-depth interviews with women who have experienced domestic abuse and those who support them, the data identifies a number of enduring challenges. The data from these interviews is contextualised within a 40-year perspective of Scotland's policy, legal, social and academic responses to victims of gender violence in general, and domestic abuse in particular. The web of public and private priorities is examined in a temporal analysis which highlights multiple misalignments, a complex hierarchy of timescales and identifies obstacles to effective justice. Recognising the consequences of these tensions and the traumatic impact on victims highlights the ways in which aspects of the justice response could be reconfigured to provide them with greater agency. This thesis argues that legislative change has limited potential until structural inequalities are addressed, the full implications of the public and private dimensions of domestic abuse are understood, and appropriate procedural justice is consistently delivered.

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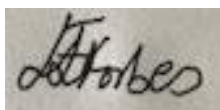
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<sup>1</sup> Reference from the film *Top Gun*, 1986.

I declare that, except where explicit reference is made to the contribution of others, that this dissertation is the result of my own work and has not been submitted for any other degree at the University of Glasgow or any other institution.

Printed Name: Emma E. Forbes

Signature:

A handwritten signature in dark ink, appearing to read 'E. Forbes', is shown within a rectangular frame.

## Chapter One: Introduction

“The struggle against wife beating must be orientated both to the immediate needs of women now suffering from violence and to more fundamental changes in the position of women.”

Dobash and Dobash, 1979: 242

### 1.0 Preamble

Police officers in the 1970s routinely dealt with men accused of hitting their wives by driving them to the edge of town, emptying their pockets and leaving them to walk home. The rationale was that the man would have cooled down and sobered up by the time he got back<sup>2</sup> and domestic abuse was not seen as a criminal matter (Burton, 2016). Pizzey (1974: 116) detected “a wide gap between what the law says and what the police will actually do.” It was after all ‘just a domestic.’ Victims of domestic abuse have, until relatively recently, endured compound denial of their status. Not only was domestic abuse “the violence of privacy” within society (Schneider, 2000:87), but victims were ‘forgotten players’ (Walklate, 2011) within the court process, treated similarly to members of the public or used as tools for the prosecution (Shapland, 1986: 219; Garland, 2001: 357; Rock, 2011: 38). There has been a significant shift from this description of 1970s policing to the current picture. Today, specially-trained officers conduct risk assessments; prioritise victim safety at multi-agency conferences; refer victims to support agencies and victim advocates; and report criminal offences to specially accredited domestic abuse prosecutors.

Thus, by any measure, changes have occurred in a relatively short time. Nevertheless, it is worth pausing to think about what this really means and what we are asking of those who have experienced abuse. For most, reporting a crime and the prospect of going to court are probably scary. It is an unfamiliar environment and most are unsure about what to expect. It means formal letters in the post that you may or may not be able to understand. It means waiting for what feels like an inordinate time to hear updates and it may mean giving

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<sup>2</sup> Thanks to Police Inspector Deborah Barton for the specific scenario, which she used during the 1<sup>st</sup> accredited domestic abuse prosecutor training course, 29 May 2015.

evidence in court. This can invite further anxiety and, potentially, frustration. Within the context of domestic abuse, all of these barriers are compounded. The dynamic shifts when the alleged perpetrator of the crime is someone you may have loved and with whom you have had an intimate relationship. If there are children, proving the case may hinge on their evidence. It is no longer just about whether you are strong enough to face the process, it becomes a tough decision to ask your child to give evidence and speak up against a parent.

It is important to remember that this is behaviour only relatively recently recognised as criminal and is quite unlike other crimes. It demands a unique approach. There may be robust pro-arrest policies and a presumption in favour of prosecution, but the majority of domestic abuse prosecutions will not prove without the evidence of the victim: engaging her in the process is key.

In tackling domestic abuse, many jurisdictions, including the United States ('US') (Simon, 2007: 180), have adopted a tendency to rely on criminalisation. There is a gathering momentum to the pace of legislative change in Scotland (Chalmers and Leverick, 2013: 376), particularly in relation to domestic abuse and there is finality to legislation: it is difficult to repeal. This calls for the question: are we getting it right? The Scottish Government's strategy on violence against women and girls is a clear commitment to justice,<sup>3</sup> and there have been legislative shifts to give victims of crime a more participative role in the process.<sup>4</sup> There is a pledge to better involve victims and witnesses by providing them with timely information and taking steps to reduce distress and fear of going to court.

Prior to, and throughout this research, I have been employed by Crown Office and Procurator Fiscal Service as a Senior Procurator Fiscal Depute. I have spent eighteen years involved in the investigation and prosecution of domestic abuse, with experience including: a pilot specialist court, the cross-border policy and prosecution of gendered violence by human trafficking and sexual exploitation as a specialist prosecutor at Eurojust in The Hague; the preparation of historical domestic abuse cases reported by the Domestic Abuse Task Force;

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<sup>3</sup> *Equally Safe* (Scottish Government, 2014; 2016c).

<sup>4</sup> Victims and Witnesses (Scotland) Act 2014 ('The 2014 Act') includes a victim's right to review.

and as a masters student. Prior to undertaking this research, I was a policy advisor within Crown Office, briefing on: child sexual exploitation in the wake of Rotherham; victim strategies; intimate image abuse (so-called ‘revenge pornography’); and domestic abuse. Through these roles, I developed a network with colleagues, advisors, stakeholders, ‘experts’, judges, lawyers, police and academics. However, I never had the opportunity to speak in depth to women who had experienced violence and abuse and to hear from them about the efforts in their name and the impact of the court process on them. This gap in my own understanding, which I consider reflects a wider institutional gap, is a key driver for this research.

Having observed the workings of government policy teams, the Justice Committee, and the reliance on key stakeholders to provide the ‘voice’ of the victim, I became determined to talk directly to the women who had experienced abuse about what it was like to go to court, to assess the impact and appropriateness of recent legislative and policy changes designed to improve their participation in the court process.

The aim of this thesis is to explore the ways in which victims of domestic abuse experience the criminal justice process and identify the extent to which there is a gap between the public perception of progress and the reality of their individual and collective experiences. The premise is that policy, practice and research tend to focus on what I refer to as the “punctuation marks” in the process: a report to the police, providing a statement, trial and sentence. The trial is daunting and stressful for victims and witnesses, and experiences of court are considered. Yet, the reality is a long, stuttering process where only a minority of cases result in a trial to establish what is proved (Green, 2011; Ferguson and McDiarmid, 2014: 107). This thesis will examine the whole process to reveal the ways in which women respond to waiting for court and the responsibility which statutory and voluntary agencies bear for this. A great deal can be learned from the seemingly banal administrative detail and practical barriers (Bosworth and Blerina, 2017): cumulatively, they paint a picture of reality.

This introductory chapter sets out the research question, the methodology adopted and the structure of the thesis. It also discusses key terms of reference which frame later chapters. It

provides a definition of domestic abuse and explains the choice of terminology in referring to ‘victims.’ It explores the scale and nature of domestic abuse in Scotland and why the public/private interplay remains pivotal to our understanding of this persistently private crime. This chapter concludes by reflecting on the contribution which this thesis seeks to make.

## 1.1 Research Question

This thesis explores how victims of domestic abuse experience the criminal justice process. Specifically, it examines:

- the relationship between the victims’ rights campaign and the statutory and policy response;
- whether new laws and policies help victims going to court to give evidence;
- the effect of the criminal justice response on women’s safety; and
- appropriate ways to give victims a voice in the adversarial process.

## 1.2 Defining Domestic Abuse

This thesis adopts a gendered and legal understanding of domestic abuse. It recognises that social and legal responses can be distinct, without being contradictory. Scotland has for a long time taken a distinct approach to defining and understanding domestic abuse. Whilst England and Wales have only recently shifted from ‘domestic violence’ to ‘domestic violence and abuse’ (Home Office, 2013), Scotland was earlier to recognise that abusive relationships encompass more than violence. Whilst understanding of what constitutes abuse has arguably been narrower in England and Wales than in Scotland, their scope of who may be affected has been, and remains, wider. The definition of domestic violence and abuse extends to family relationships, while in Scotland, the definition of domestic abuse is contained to (ex)partners. In this way, Scotland works within parameters which recognise that distinct policy and legal understandings can be complimentary. The Scottish Government recognises domestic abuse as a gendered problem (Equally Safe, 2014; 2016c). The current Joint Protocol (2017) between Police Scotland and Crown Office and Procurator Fiscal Service

(“COPFS”) contains a definition of domestic abuse<sup>5</sup> which includes physical, verbal, sexual, psychological and financial abuse. It applies to partners and ex partners, men and women. It does not distinguish between same-sex and heterosexual relationships, but it is limited to intimate partner relationships, distinct from the wider family violence definition in England and Wales. Thus, in Scotland there is a gender-neutral definition of domestic abuse within a gendered policy understanding of abuse (*Equally Safe*, 2014; 2016c). This may appear contradictory and problematic. Heidensohn (2002: 491) observed that “the associations between gender and crime are profound, persistent, and paradoxical.” However, the Scottish approach ought to be seen as a nuanced understanding which recognises the gendered dynamic of domestic abuse within the neutrality and universality of the law.

Such a definition may seem challenging for proponents of feminist jurisprudence (Smart, 1995) and feminist law-making (Schneider, 2000), but it is argued that a feminist approach does not mean prioritising and specialising gender issues within the law. To do so risks further marginalisation and suggests “women’s greater need” (Gelsthorpe, 2017) or that feminist criminology be limited to “the woman problem” (Davies, 2007: 177). Gelsthorpe (2017) showed studies of ‘women only’ courts to be inconclusive and that policies ought to recognise a gender disparity (Barnett, 1998). The predominant discourse in domestic abuse research has been “explicitly political” (Schneider, 2000: 21) with a “dialectical relationship” between rights and politics in the gendered-abuse commentary (Schneider, 2000: 7). This is unhelpful at this stage in the arc of progress; a full appreciation of inter-playing rights and responsibilities is the most cogent approach to accurately situating women’s agency in the justice response.

The Scottish definition of domestic abuse achieves the aim of making recourse to the criminal law open to all, whilst recognising that some typologies of domestic abuse (Johnson, 2008) are predominantly perpetrated by men on women (Hoyle, 2012: 401; Williamson et al., 2018), namely ‘intimate terrorism’ (Johnson, 2008) or ‘coercive control’ (Stark, 2007). Hester et al. (2017) found, in a study of male victims of domestic abuse, that less than 5% had experienced coercively controlling behaviour. Thus, an appropriate legal response needs

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<sup>5</sup> A copy of the definition is set out within the glossary at appendix two. The Joint Protocol is available at: [http://www.scotland.police.uk/assets/pdf/keep\\_safe/175573?view=Standard](http://www.scotland.police.uk/assets/pdf/keep_safe/175573?view=Standard) Accessed: 27/03/18.



a gendered policy understanding. *Equally Safe* (2014; 2016c), the Scottish Government strategy on violence against women and girls, outlines approach. Michael Mathieson (2015), then Cabinet Secretary for Justice, launching a public consultation on a specific criminal offence of domestic abuse, cited the government commitment in *Equally Safe* to ensure that the legislative framework “reflects our modern understanding of what domestic abuse is so that those who perpetrate such abuse have no hiding place.”

Monckton-Smith et al. (2014) observe that framing domestic abuse as gendered is:

“simultaneously a feminist and a human view of the world. But feminist arguments are often considered biased, political and anti-men.”

It is a recognition of the political, and often abrasive, perceptions of some feminist arguments, that justifies my approach to frame the problem as *gendered* and *legal*. This is explored throughout the thesis. The varied typologies of abuse are recognised at relevant points, but generally references to domestic abuse are references to coercive control.

### 1.3 What's in a Name: Victims in the Criminal Justice Process

Chapter two provides a discussion of shifting meanings and interpretations of victimhood. Feminist literature on domestic abuse is divided on appropriate terms of reference and many prefer ‘victim-survivor’ (for a discussion, see Burton, 2008: 124). Most will refer to abusive (ex)partners as the ‘perpetrator.’ These are social terms and within the context of policy-drafting, academic commentary and therapeutic input they are appropriate. As I have engaged directly with those who have experienced abuse to conduct this research, I judged it sensitive and apposite to refer to victims and perpetrators in my discussion. However, these are not suitable terms within a court of law, where the presumption of innocence is a basic tenet of our justice system and the rules of evidence are clear. The 2014 Act’s reference to victims reflects a shift, but broadly relates to legislation providing service rights within the process and has not affected court vocabulary. Within this thesis, reference to legal texts or the court process may refer to complainers or accused: I have broadly adopted social meanings.

## 1.4 Counting Domestic Abuse

The nature and impact of domestic abuse are increasingly understood and it is recognised as a “serious societal problem” (Schneider, 2000: 59). The overall ‘cost’ in the UK is an estimated £15.7 billion/year (HMIC, 2014). Whilst some will contest the extent of the problem and its gendered nature, governments recognise domestic abuse as an endemic problem. Nevertheless, understanding the scale of the problem is difficult because of the hidden, suppressed nature of the offending.

Police Scotland responds to a domestic abuse call, on average, every nine minutes.<sup>6</sup> In 2016/17, it responded to a total of 58,810 domestic incidents, an increase of 1% on 2015/16 (Scottish Government, 2017c). In Scotland in 2016-17, recorded homicide was at its second lowest figure since recording began in 1976 (Scottish Government, 2017c). Eight of the sixty-one homicides were domestic.<sup>7</sup> Whilst the number of domestic homicides is relatively low, they are arguably all preventable. Furthermore, the number of recorded ‘attempted murder and serious assault’ charges – 438 – is concerning (COPFS, 2017).

The challenge of ‘counting’ explained by Kelly (2012) relates to sexual violence, but is relevant to difficulties encountered in quantifying domestic abuse (Walklate, 2014). Challenges are compounded when quantifying emotional and psychological abuse (Walby and Towers, 2018). There have been some attempts to ‘count’ (Stanko, 2001; Walby and Myhill, 2000; Walby et al., 2016), but methods remain limited (Hoyle, 2011; 2012). For example, Scottish Women’s Aid (‘SWA’) has conducted a survey of its service provision on one day each year since 2009. The annual census does not give an indication of the scale of domestic abuse in Scotland but it provides a snapshot of those in refuge, those being supported in the community and those turned away from refuge due to lack of resources. It shows that there was greater availability of refuge space in 2009 than in 2017.<sup>8</sup>

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<sup>6</sup> Media campaign available at: <http://www.scotland.police.uk/whats-happening/news/2017/december/tis-the-season-domestic-abusers-were-coming-for-you> Accessed: 02/07/18.

<sup>7</sup> The Scottish figures for 2016-17 and 2017-18 are available at: <http://www.copfs.gov.uk/publications/statistics> Accessed: 13/09/18. The figure for England and Wales (Office for National Statistics, 2017) is not comparable because their definition includes wider family members.

<sup>8</sup> The annual census results are available at: <http://womensaid.scot/working-for-change/policy-research/publications/> Accessed: 27/08/18.

Crime surveys, including the Scottish Crime and Justice Survey, rely on individuals' perceptions of their experiences. They tend to focus on crimes and there may be others present when answering questions (Walby and Myhill, 2000). There is also arguably still a social stigma. The crime survey has been criticised as being an inaccurate counting method (Ackerman, 2016); as contributing to a societal 'Victims R Us' mentality (Stanko, 2000: 14; Mythen, 2011); and failing to capture the 'impact' of victimisation (Hoyle, 2012: 404; Zedner, 2002: 428). That said, it has contributed to our increased knowledge (Connelly and Cavanagh, 2007: 260) in relation to domestic abuse (MacQueen, 2014) and has allowed criminologists to start to quantify the problem (Stanko, 2000: 16). It has contributed to the scale of domestic abuse being recognised as a "major societal problem" (Ackerman, 2016) and provides data on societal attitudes to crime (Zedner, 2002: 425). MacQueen (2014: 2) does, however, point to the need for more "complex analyses" to enhance knowledge of domestic abuse from survey data.

Counting creates a paradox: without a means to quantify the extent of domestic abuse, it is difficult to assert its pervasive nature. However, the means of counting is unreliable. Police continue to measure 'incidents,' rather than the number of victims reporting, and police recording systems change, which skews the data. The Domestic Abuse (Scotland) Act 2018 ('the 2018 Act') introduces a specific offence of domestic abuse, as a course of conduct, which will result in police recording one incident, where previously there may have been numerous. For example, if a victim reports two assaults on different dates, continued harassment and threats of further violence, that would currently be recorded as four 'incidents.' Under the new legislation, they are likely to be recorded as one. An ongoing study of the implementation of the offence of coercive control<sup>9</sup> in England and Wales has shown that police continue to record separate incidents, not always recognising a course of conduct (Barlow et al., 2018).

Given these challenges, it is unsurprising that many academics prefer qualitative or mixed method approaches which seek to add context to the problem by describing lived experiences (Antilla, 1986; Saunders, 2002; Hoyle, 2011; 2012). The impact of domestic abuse has been

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<sup>9</sup> Defined in the Serious Crime Act 2015, s76.

widely narrated, including the physical bruises (Pizzey, 1974) psychological effects of trauma (Herman, 2001), financial cost, both individual and societal (Walby, 2004) and, in some instances, loss of life (Westmarland, 2015: 10). The societal cost is far-reaching and impacts upon schools, health services, policing and employers, through absences from work (Eley, 2005: 8). There is also the impact of being deemed a ‘victim’ of crime and the responsibilities and expectations attached to this status. Adopting a qualitative approach, it is this impact which is explored.

### 1.5 Public/Private ‘Dichotomy’

“The decision about what we protect as private is a political decision that always has public ramifications.”

(Schneider, 2000: 90)

The policy and legal shift over forty years have nudged a traditionally ‘private’ dispute into the public domain. However, the extent to which these private crimes are actually made public by reporting them to the police demands further scrutiny. This thesis challenges the rhetoric of a dichotomy and suggests that contrary to being ‘public’ or ‘private,’ domestic abuse is experienced in complex ways with mingling public and private connotations. It refutes that the introduction of new laws and gaining public confidence for women to report domestic abuse constitutes bringing it into the open. Whilst increased confidence is a welcome development, this thesis will show that subsequent experiences of the ensuing justice process remain, for many, stressful, unsafe and disappointing. Often, abuse continues throughout the process.

With the exception of the narrowed focus of the common law crime of breach of the peace – where behaviour must “threaten serious disturbance to the community”<sup>10</sup> – the predominant approach in Scotland has been to criminalise acts previously considered private.<sup>11</sup>

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<sup>10</sup> Lord Coulsfield in *Smith v Donnelly* 2002 JC 65.

<sup>11</sup> Examples include: Smoking, Health and Social Care (Scotland) Act 2005; Abusive Behaviour and Sexual Harm (Scotland) Act 2016; Sexual Offences (Scotland) Act 2009.

Schneider's (2000: 90) view is convincing in relation to crime control (Garland and Sparks, 2000: 191). Criminalising domestic abuse as a statutory offence may weaken the 'violence of privacy' (Schneider, 2000: 87) yet, a shift in the rhetoric of the old dichotomy does not guarantee societal acceptance of any re-conceptualisation of public and private. In describing the family, Bourdieu (1996: 20) highlights the legal challenge of intractable privacy:

"This sacred, secret universe, with its door closed to protect its intimacy, separated from the external world by the symbolic barrier of the threshold, perpetuates itself and perpetuates its own separateness, it's 'privacy,' as an obstacle to knowledge, a private secret, 'backstage.'"

Christie's (1986: 19) question of why it is so challenging to "get the phenomenon out in the open" continues to resonate despite legislative and policy advances. Currently, police reports relating to physical assaults and threatening and abusive behaviour contain intensely private details of family life. To read such a report feels like a window into someone else's inner sanctum. Such feelings are likely to be magnified as reports contain details of emotional and psychological abuse over periods (Ontiveros, 1995). Victims may be required to share personal details of sleeping arrangements, daily routines and private messages, comprising: "an individualised package of behaviours...by the person who knows her most intimately" (Tolmie, 2017: 7). This seems to go beyond Hoyle's (2000) 'being a nosy bloody cow' to an uncomfortable position for professionals who are not attuned or accomplished in dealing with such intimacy.

Zero tolerance policies, which ensure robust presumptions in favour of arrest and prosecution, raise tensions for individual victim agency. The legislative attempts to provide victims with greater rights<sup>12</sup> and which purport to shift more forms of abuse from the private to the public sphere, such as the 2018 Act, have brought to the fore intractable privacy and the seemingly irreconcilable agency/control dichotomy for victims not willingly engaged in the criminal justice process. The links between the public/private and agency/control dichotomies – and the extent to which they are truly dichotomies – have not been fully examined within the context of the Scottish policy and legislative response.

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<sup>12</sup> The 2014 Act; Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill 2018.

Public identification of domestic abuse as wrong does not weaken its inherently private nature, and for many it remains suffocatingly hidden. In this way, it is important to recognise and understand the complexity of the public/private rhetoric which plays out in relation to tackling domestic abuse. This thesis provides an opportunity to view the court process, shifting agency, decision-making and control as a series of continuums which mirror the continuum of offending behaviour.

## 1.6 Method

Throughout this thesis, I adopt a mixed-method approach which triangulates:

- a grounded, feminist, qualitative approach;
- a socio-legal narrative of government, policy and social responses; and
- auto-ethnographic practitioner experience.

My data derives from in-depth, qualitative interviews with women who have experienced domestic abuse and their support/advocacy workers about their experiences of reporting to the police and the ensuing criminal justice response. By interviewing both the victims of abuse and their support-workers, I aimed to ensure a safe ethical position, where participants had access to therapeutic support. In fact, I unravelled a complex mesh of identities, as the importance of informal and formal support networks became resoundingly clear. Women's Aid's ethos of 'Women-Helping-Women-Helping-Women' (Scottish Women's Aid, 2017) remains strong across the voluntary sector in this area, and many of the support and advocacy workers I interviewed disclosed experiences of abuse.

A socio-legal narrative of the wider societal response to domestic abuse is presented as a timeline of legal, social, policy, academic and international responses to domestic abuse over a 40 year period. It illustrates the pace and direction of progress and provides an analytical framework for discussion of the data findings. Triangulating these knowledge sources, I have

ensured practical application to my theoretical findings, by drawing on my professional experience.

As a prosecutor, I am aware of the challenges to responding sensitively and appropriately to domestic abuse. My colleagues are passionate and committed to the investigation and prosecution of all crime. They may get battle weary, but they are broadly an inspirational team, who work within public prosecution because of their belief in the greater good. Nevertheless, there are frustrations and misunderstandings when women retract and return to an abusive partner. Personalising each case with an empathic response, whilst maintaining professional obligations, is difficult. This thesis explores ways in which the criminal justice response might meet these challenges.

Less than a decade ago, Gillies and Alldred (2012) observed what they perceived as a shift in feminist research from exploring women's narratives to "the explicitly political aim of challenging gender oppression and improving women's lives." In a short period, the 'explicitly political' has arguably become part of mainstream conversation. The meaning of 'political' in this sense is perhaps best understood by reverting to the early struggles of the founders of the Women's Liberation Movement who asserted that the 'personal is political' in their recognition for women's equality. For them, "*political* was used...in the broad sense of the word as having to do with power relationships, not the narrow sense of electoral politics" (Hanisch, 2006: 1). Challenges to gendered abuse and oppression now infuse many aspects of life through social media, the news, television and, even awards' ceremonies, as a result of campaigns including #MeToo, Time's Up and the Gender Pay Gap. The observation that variances in feminism are "highly controversial" (Woolf, 1928; 2004) remains pertinent. Rather than being 'explicitly political,' this thesis is simply timely.

## 1.7 Structure of Thesis

Chapter two provides a review of the academic literature in relation to feminist contributions to criminology, victimology and domestic abuse. It explores meanings of victimhood and the empirical data on experiences of the court process. In charting early feminist contributions to

research on violence against women and emerging research on victims' experiences of the justice process, I observe that the focus has been predominantly on the initial call to the police and subsequent trial. I argue that this is misleading, as a significant proportion of cases do not proceed to trial and large parts of the process remain unexamined. Situated within sustained policy development and major legislative change, a narrative of which is set out in chapter three, raises questions of efficacy. Predominantly relying on grey literature,<sup>13</sup> the timeline in chapter three provides an overview of policy, legal, social, academic and international developments which have framed Scotland's response. This provides a framework within which to contextualise the academic literature and the research data. Much of the gap between rhetoric and reality for victims of crime in general and domestic abuse in particular, can be explained by the timing of events, broader cultural shifts and the ways in which time is experienced and misunderstood in a criminal prosecution.

Chapter four sets out my methodology and the rationale for my grounded, feminist approach. It reflects on ethical challenges and the implications of the role of gatekeepers, the blurred identities of some research participants and potential researcher-effect of conducting this research as a prosecutor.

Chapters five, six and seven set out my data findings. In chapter five I predominantly examine the role of victim advocates and the ways in which they provide support to victims through the court process. I consider how this role has evolved and the implications of risk management tools, increased managerialism and patchwork service provision. In chapter six I focus on victims' experiences of the process, taking a holistic view which considers the implications of waiting for and at court and the range of powerful emotions involved. Chapter seven links the role of the advocate and women's lack of voice in the process, to explore potential ways for the advocate role to be better exploited to augment women's agency.

Chapter eight reviews the findings and concludes the thesis by setting out the contribution made by this research. It illustrates the ways in which our understanding and practice can be

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<sup>13</sup> Grey literature can broadly be understood as unpublished material, government reports and reports by other relevant organisations (<https://www.ed.ac.uk/information-services/library-museum-gallery/finding-resources/library-databases/databases-subject-a-z/grey-literature> Accessed: 20/08/18).



improved by viewing the criminal justice response holistically, rather than in terms of fixed points and identifies areas for future research in Scotland.

## 1.8 Contribution

This thesis contributes a grounded, critical analysis of women's experiences of reporting domestic abuse alongside the experiences of those who support them through the ensuing process. It is holistic in its examination of the criminal justice response and provides an analysis which is situated in a socio-legal narrative of the public policy, legislative, academic and social responses. The timeline in appendix one is the only representation of the contributions of these strands to the Scottish landscape over 40 years. With the accompanying analysis in chapter three, it is a significant contribution to our understanding of the justice response to victims of domestic abuse. Like the gaps in the literature and the subsequent interview data, it challenges views which focus predominantly on experiences in the police station and courtroom. This thesis moves beyond the punctuation marks to consider the implications of waiting at home, travelling to court, the waiting room and the unmet support needs and unanswered questions beyond justice practitioners' conclusion of their 'case.'

There has been a great deal of research across many disciplines on the experience and impact of domestic abuse, and the dynamic is increasingly understood. It is now recognised that domestic abuse is experienced as a continuum of abuse, and this has influenced legislation. However, whilst Scotland has to a great extent been a policy leader in this field, the academic literature is grounded in other jurisdictions, predominantly England and Wales and the US. Scotland has a distinct legal system and a unique investigation and prosecution approach: my role as a prosecutor adds depth to the interview data recorded in the following chapters.

The detailed temporal analysis presented in the timeline and chapter three provide a timely contribution to the Scottish landscape, as a new, specific offence of domestic abuse is being introduced into law and public discussion of domestic abuse is re-invigorated. However, the *means* of using the timeline as a mode of analysis and the way in which the grey literature is presented and used to situate the data generated from the interviews has wider utility beyond

Scotland. Further, the knowledge contribution generated from the findings chapters, particularly in relation to the traumatic impact of waiting at court, the examination of women's experiences of the justice process beyond formally recognised interventions and the gendered implications for women's agency are all relevant beyond Scotland. These contributions are relevant irrespective of the nature of the legal system and are situated within the broader feminist literature, which bears witness to women's lack of agency and voice within formal justice responses. Chapters two and three tell the two stories thus far: women's experiences of domestic abuse and struggles to be heard; and Scotland's policy and legislative response. Building the thesis findings on such a coherent body of literature allows key concepts from this thesis, including the tertiary victimisation of waiting, the potential for analytical generalisability (Smith, 2017). Analytical generalisability can be understood as a two-step process of relating research findings to existing theoretical approaches and applying those theories in ways which generate fresh knowledge or understanding (Yin, 2010). Beyond the story-telling and depth of understanding afforded by the in-depth interviews, this thesis arguably contributes to wider criminological feminist theories in this way.

## Chapter 2: Review of the Literature – Different Conceptualisations of Victimhood and Victims of Domestic Abuse in the Criminal Justice Process

“Firstly, being a victim is not a thing, an objective phenomenon. It will not be the same to all people in situations externally described as being the ‘same.’ It has to do with the participants’ definition of the situation. Secondly, the phenomenon can be investigated both at the personality level and at the social system level.”

(Christie, 1986: 18)

### 2.0 Introduction: Domestic Abuse as Hidden

To appreciate the layered implications of being a ‘victim of domestic abuse’ within the criminal justice process, it is valuable to weave together the key literature and concepts from a range of disciplines to make linkages between feminist literature, literature on victims, legal commentary and with contributions that enhance our understanding of violence against women. As each new concept is introduced in this thesis, there is reference to extant empirical data and the way in which it relates to the broader research question is highlighted.

This thesis seeks to understand the experiences of victims of domestic abuse seeking a criminal justice response in Scotland. It asks what impact policy and legislative change has on individual victims’ encounters with the justice system and in doing so, it explores the inter-play between public and private in the lived experiences of victims. Chapter one highlighted a disconnect between the apparent sweep of progress on behalf of victims and the barriers still faced by individuals when engaging the justice process. The academic work in this field which addresses the enduring struggles faced by women is reflected within this chapter. This must, however, be considered within the context of the significant policy changes, influenced by ardent campaigners with a concerted will to eradicate violence against women and girls, and improve justice experiences for victims, which will be considered in chapter three. I moot that this gap between policy progress and ongoing individual struggles can be explained by three gaps in the current literature; first, a temporal analysis of women’s

experiences of reporting domestic abuse, which takes account of the *whole* criminal justice process, beyond the punctuation marks of a phone call to the police and giving evidence in court; second, an application of procedural justice which is specific to the domestic abuse victim's experience; and third, a gendered framing of the public/private relationship. This thesis aims to address these gaps. More broadly, there is no recent empirical data on victims' experiences of the court process in Scotland and the distinct legal system and policy landscape in Scotland is worthy of closer examination.

Feminist activist-academics were the first to expose the scale and nature of domestic abuse (Gadd, 2017: 670). Early feminist criminologists contributed to bringing the violence against women agenda to the fore by recognising that women's voices were lost in traditional "gender-blind" criminological study (Walklate, 1995; Gelsthorpe, 2002; Davies, 2011a). As victimology emerged as a discipline, the feminist contribution focused on female victims and the gendered nature of many types of criminality.

The evolving relationships between feminism and criminology (Gelsthorpe, 2002; Renzetti, 2013) and feminism and victimology have been fraught (Walklate, 2007; 2011; Davies, 2011b); there is diversity within each discipline (Gelsthorpe, 2002); and the debate around victims' participation and voice in the justice process and women's agency remains unsettled. In focusing on experiences of victimhood and the criminal justice process for domestic abuse victims, it becomes increasingly important to understand the development of these various strands of literature, which together provide a sphere of reference.

This chapter engages the body of international feminist literature on domestic abuse and violence against women more broadly. It is both chronological and thematic and is in three parts. Part one charts the feminist literature of the 1970s which influenced violence against women literature, criminology and victimology. It encompasses "promoting gender as an important topic for analysis" (Heidensohn, 1989: 91) by highlighting the nature and impact of domestic abuse; the problematic gender/violence nexus (Walklate, 1995); and the emerging literature on victims. It reflects on the impact this literature has had on the perceptions of those who have experienced gendered abuse as 'victims' and engages with the victim/agency

debate. It addresses the research which examines the experiences of victims and considers their role within the criminal justice process, with particular focus on research which grapples with the tension between agency and victimhood.

Part two explores the development of a body of violence against women literature, particularly aspects relating to our understanding of domestic abuse and the socio-legal studies which have informed our knowledge of domestic abuse victims' experiences of the court process. Legal, sociological and philosophical perspectives have framed the current understanding of domestic abuse as a continuum of 'coercive control' and predominantly gendered offending. This provides context to examine the experiences of the victim of domestic abuse in Scotland. Of note, there are some limited examples of research which addresses victims of domestic abuse and their experiences of justice, but these predominantly focus on just one aspect of the process. Cumulatively, this illustrates the need for broader research on victims' experience of the court process, both in terms of a multi-disciplinary approach and in consideration of the process as a whole. The literature rationalises a feminist, gendered approach to the justice response to domestic abuse, framing it within the inalcitrant public/private dichotomy.

Part three briefly maps how risk rhetoric entered criminology and the impact that risk has had on assessing victim safety in domestic abuse. Recognising that theories of risk have been developed elsewhere, I draw on the literature only to clarify understanding of policy evolution in relation to victim safety when reporting domestic abuse. Assessing the influence of the risk narrative on the wider criminal justice process, it explores its effect on how domestic abuse is investigated and prosecuted. Specific consideration is given to the literature which addresses how victims of domestic abuse experience the criminal justice process. This provides academic context to the policy developments narrated in chapter three, which together illustrate a lack of empirical data about the victim impact of the risk assessment in domestic abuse cases in Scotland.

In this chapter, I argue for a more holistic consideration of the victim's experience of the justice process. This is particularly pertinent for victims of domestic abuse, where the

public/private dichotomy has been a barrier to justice for many, and scrutiny of the whole process is required to prevent further manipulation and perpetration of abuse. In analysing the literature on the gender/violence nexus, I provide theoretical grounds to support a gendered understanding of domestic abuse and posit that current understandings of public and private behaviour remain gender-blind.

## 2.1 Feminism, Criminology and Victimology

### 2.1.1 Early Scholarship on Violence against Women

If feminism entered the public consciousness through the campaigns for suffrage in the early twentieth century<sup>14</sup> (Marlow 2000 for an account of the Suffragettes movement; Burman and Gelsthorpe, 2017: 213 on the contribution of the Suffragettes' movement on feminist thought), a second wave of feminism<sup>15</sup> from the 1960s onwards (Davies, 2011a; 2011b; Burman and Gelsthorpe, 2017), contributed such a dense volume of work on violence against women that Kelly (1988) referred to a "knowledge explosion" across policies, practices and public opinion in this area (Renzetti, 2013: 48). Cook and Jones (2011: 125) observe that whilst they are now referred to as, "radical feminists," at the time they were simply, "feminists." Recognition of a common goal is not to undermine the broad church of feminist thought which encompasses a wide remit of political and social views and represents intersectionalities of, *inter alia*, race and ethnicity.<sup>16</sup>

Drawing on the feminist literature which has contributed to current understanding of the nature of domestic abuse, the impact of some early work was 'explosive' and still contributes to our understanding. Erin Pizzey (1974) was a feminist, activist and founder of a women's community centre in Chiswick, London which was the forerunner to Women's Aid in England and Wales. Her memoir of the early years of this refuge, *Scream Quietly or the*

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<sup>14</sup> For a history of key feminists prior to this date, see Gamble (2001).

<sup>15</sup> The term 'second wave feminism' is broadly accepted as meaning the concerted, collegiate activism beginning in the late 1960s and consolidated in the 1970s and 1980s (Burman and Gelsthorpe, 2017: 213). As an expression, it may have been contested as an inaccurate picture of feminist unity which fails to reflect a diversity of theoretical underpinnings and political views (Renzetti, 2013: 66) but remains a helpful reference point to a distinct period.

<sup>16</sup> Shifts towards an appreciation of intersectionality have been described as "third wave" feminism (Hoyle, 2011: 152).

*Neighbours will Hear*, was widely read and is the seminal feminist text providing narratives of women's experience of domestic abuse at a time when it remained largely hidden.

In 1979, the first empirical Scottish research was published. *Violence Against Wives* (Dobash and Dobash, 1979) was ground-breaking in terms of scope, methodology and subject. It sought to garner information about the 'violent' relationship, the lived experience of the women and their domestic background. Unlike Pizzey, the Dobashes and their team were independent academics. Nevertheless, they report spending time within the refuges, well beyond the allotted interview times, to gain greater insight and there was the positive unintended consequence of building trust and rapport with the women they interviewed. Their research increased knowledge on the extent and nature of domestic abuse and their methodology guides researchers working with sensitive and potentially vulnerable groups, including the current research.

The nature and scale of domestic abuse in the UK may not have been acknowledged prior to this work, but physical assault on a partner was recognised as a crime (Dobash and Dobash, 1979: 207). The study observed that "considerable discretion is employed by the police in making arrests" (1979: 207) and that an arrest is only likely where the severity of the assault requires hospital admission (1979: 215). The "indifference" of the legal system was cited as compounding isolation and risk of repeat victimisation, increasing risk of murder (1979: 222; on femicide see Dobash and Dobash, 2011; Schneider, 2000).

In the US, Walker's study<sup>17</sup> (1979) was psychological, rather than sociological, but shared a feminist under-pinning. The first to acknowledge that women are experts in their own lives, she also found evidence of minimisation. Psychological studies have been criticised because their medical approach tends to be treatment-focused, thus problematising and victimising women (Bumiller, 2008: 68). Walker, however, made a significant contribution by identifying the psychological and emotional harms experienced by abused women, which

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<sup>17</sup> Detailed interviews with over 120 women.

influenced Johnson's (2008) later work on identifying typologies and defending gender asymmetry (Johnson et al., 2014).

This early scholarship was augmented by Kelly's (1988) contribution, which adopted a similar, yet distinct, methodology and gave impetus to other refuge research. Like Pizzey, Kelly was an early member of a refuge group – and remained a member at the time of conducting her research – which contributed to her radical feminist perspective and grounding of sexual and domestic abuse as gendered violence (Kelly, 1988: 2). Her pilot interviews were conducted with friends and associates: a true homily to the heterogeneity of women's victimisation. Kelly's identification of sexual violence as a 'continuum' (1988: 77) was the first challenge to the rhetoric that sexual violence is experienced as a 'one-off.' It has influenced views of other forms of violence against women, including intimate image abuse (McGlynn et al., 2017) and domestic abuse.

Thus, as early as 1979, the root causes of domestic violence were being situated in broader cultural and societal challenges to gender inequality and patriarchal hierarchies (Dobash and Dobash, 1979: 12); and emotional and psychological abuse was highlighted. In 1988, Kelly suggested an 'epidemic' proportion of violence against women. The pertinence and relevance of these research pieces today are both impressive and disheartening, illustrating wisdom at a time when domestic abuse was barely acknowledged, yet also highlighting the slow progress since. As domestic abuse was gaining recognition as a societal problem, wider scholarship was becoming increasingly gender-aware.

### 2.1.2 Feminist Influence on Criminology

Criminology had gained traction by the 1960s (Garland, 2002) as a discrete discipline (Lacey and Zedner, 2017). Within this field the "criminal man" dominated (Evans and Jamieson, 2008), and masculinities were a focus (Walklate, 1995: 95, references Connell on "hegemonic masculinity"). The criminal fraternity was predominantly male, and little consideration was given to the role of women within criminal justice, as victims, practitioners or perpetrators (Burman and Gelsthorpe, 2017). Second wave feminism challenged this



approach by introducing a gender-perspective and “raised profound challenges to the discrimination against, exclusion of and (mis)representation of women,” especially in relation to the criminal justice system (Evans and Jamieson, 2008: xvi). They identified an analytical and empirical gap in the literature (Rock, 2007: 43).

Feminist academics have addressed this lack of visibility of women in criminology in different ways: through a legal lens which challenges the structures of law-making (Smart, 1995); a sociological framing of gender and crime (Heidensohn, 1989; 2000; 2002); a more nuanced exploration of women’s role within criminal justice agencies (Gelsthorpe, 2002), particularly women offenders (on the treatment of female offenders and gendered sentencing initiatives see Gelsthorpe and Morris, 2008; Gelsthorpe and Loucks, 2008; Gelsthorpe, 2017); and consideration of women’s victimisation (Walklate, 2007a; 2007c). Heidensohn (1989) narrates that women’s perspectives were either invisible in the literature or portrayed in ways which “distorted or marginalised” women’s experiences (1989: 91). She rightly observes that academic contributions seeking to shift this perspective were only “slowly seeping...into the mainstream” (1989: 91).

Smart (1989; 1995) examined the relationship between women and the power structures of the legal system. She introduced the concept of feminist jurisprudence (Smart, 1989: 66), which has subsequently been interpreted by Schneider (2000) and through the feminist legal judgements (see paragraph below). Smart’s earlier work is credited with introducing, or at least refining, the relationship between gender and crime control (Davies, 2011b: 89; Burman and Gelsthorpe, 2017: 214). Whilst the legal response to gendered abuse has altered significantly since Smart’s analysis, her critique of criminal and civil procedure continues to bear relevance to understanding why engaging with the court process remains so complex for victims of intimate partner abuse. She describes a system in which:

“experiences are translated into another form in order to become ‘legal’ issues...For the system to run smoothly, whether it is criminal or civil, the ideal is that all parties are legally represented and...say as little as possible...so the legal process translates everyday experience into legal relevance.”

Imagining a criminal domestic abuse trial, where the accused is represented and the complainant is not, this gives greater scope for translation of the perpetrator's experience, than the victim's perspective.

The body of work in which women were written into criminological study has had two major implications for the current study. First, it highlighted the “very distinct gender bias whereby men are predominantly violently abusive to women” (Davies, 2014: 28); and abuse was recognised as grounded in wider inequality and control within society (Walker, 1979; Shepard and Pence, 1999; Dobash et al., 2000; Johnson, 2008; Renzetti, 2013: 6). Heidensohn (1989: 105) defined gendered crime as “those offences committed mainly by men against women and children in which they use power or force and in which traditional gender roles are played.” Second, it led to the recognition of female victims (Cook and Jones, 2011; Walklate, 2007b; 2011), female offenders (Smart, 1977; Gelsthorpe and Loucks, 2008), and the feminist contribution to victimology (Davies, 2011a), all of which increases our understanding of how women are viewed within the criminal justice process and, consequently, the experiences of victims of domestic abuse.

### 2.1.3 Feminist Engagement with Victimology

The victim has evolved into a key player in the criminal justice process, but was largely invisible from early criminology (Garland, 2001: 357), which was perhaps “not remarkable” when criminology itself was a “minor discipline” (Rock, 2011: 37). Victimology charts back to the late 1940s (Zedner, 2002: 420) and focused on victim-precipitation or victim-proneness (Zedner, 2002; Karmen, 2013; Hoyle, 2011), which has left a legacy of victim-blaming that has not been completely eradicated (Walklate, 2011; Davies, 2011a; 2011b: 164).

The victims' movement, which started in the US in the late 1960s, led to the creation of organisations such as Victim Support and victim compensation schemes (Zedner, 2002: 440; Miers, 2011), which contributed to a victim agenda (Zedner, 2002: 432; Hoyle: 2012). This coincides with second wave feminism and the recognition of female victimisation. This combination perhaps explains Evans and Jamieson's (2008: xx) observation that, “early scholars working in the field of victimisation were often driven by their activism as feminists” (for a more recent example of academics with a radical feminist underpinning, see Cook and Jones, 2011). These early activists, including Kelly (1988) in her identification of

a continuum of violence, challenged the parody of the violent stranger in the bushes and highlighted women's vulnerability to men's 'normal' and 'everyday' perpetration of violence (Stanko, 1990). It was this identification of structural, patriarchal causes of violence against women which created the foundation for academic research of women's victimisation (Cook and Jones, 2011: 128). Moreover, despite individual victims being no more homogeneous than feminists, in victimology an opportunity is presented for feminist views to coalesce around a unified purpose, as the crime victim is "readily imagined as united" (Garland, 2001: 11). This has led to criticism that victimology perpetuates notions of idealism (Walklate, 2011: 148).

The introduction of national crime surveys<sup>18</sup> has also been attributed to developing knowledge of victims and particularly women's experiences of victimisation (Zedner, 2002: 421; Walklate, 2007). Moreover, victimology was influenced by the emerging "feminist critique within criminology" (Davies, 2011a: 179). Chapter one has shown that when the focus is on offending within the context of an intimate partner relationship, women are more likely to be victims. Stanko has been cited as one of the first to challenge the rhetoric on women's ubiquitous fear of crime (for a wider discussion of women's fear of crime, see Davies, 2011a: 189; 2011b: 107) and distinguish gender-violence as the root of women's victimisation. A critic of the crime survey, Stanko (2000: 16) acknowledges it is "democratic in its brief, however imperfect it may be in its accomplishment." Her own adoption of quantitative methods resulted in a significant audit of domestic abuse in the UK, which invited media attention and raised public awareness of domestic abuse (Stanko, 2001). Whilst the crime survey has flaws, it is gaining sophistication and increasingly being developed to measure and theorise gender and violence (Walby and Towers, 2017) and domestic abuse (Myhill, 2017).

Recognition of its shortcomings led in the early 1990s to development of "feminist methodologies" which are largely qualitative (Evans and Jamieson, 2008: xix) in a bid to distinguish scholarship from "an imagery that stressed defeat, passivity, submission and

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<sup>18</sup> A pilot victimisation study was conducted by Sparks, Genn & Dodd in 1977 (Walklate, 2007: 4). The first British Crime Survey was in 1982, followed by the first Scottish Crime and Justice Survey in 1983 (Zedner, 2002: 421).

resignation [of women]” (Rock, 2011: 46). In tandem, data collection has developed and, since 2008 the Scottish Crime and Justice Survey<sup>19</sup> has asked specific questions about the prevalence and nature of domestic abuse (MacQueen, 2016), prompting Skinner et al. (2012: 38) to conclude that “no one method of research is inherently feminist; rather it is how studies are conceptualised and how findings are presented and used that gives research its feminist perspective.” Thus, the survey remains useful in terms of the information it provides about victims’ perceptions and reactions (Zedner, 2002: 425) and it has the potential, within mixed method approaches, to teach us more about domestic abuse (MacQueen, 2016; Walby and Towers, 2017; Myhill, 2017).

Against the backdrop of an emerging body of qualitative research about the nature and scope of women’s gendered victimisation, the broader notion of the victim and the place of the victim within court was being scrutinised. Despite this important awareness-raising agenda, Walklate observed that, in many respects, feminism was marginalised by victimology (2004: 54). This invokes debate around the relationship between women’s victimisation and agency, which is explored below. Firstly, however, for the current research, it is important to understand not only the nature of victimisation, but also its implications for individuals within the formal criminal justice response: social and legal meanings of ‘victim’ are distinct.

Conceptualisations of victimhood and victimisation have moved on from Christie’s idealism of the ‘little old lady’ (Christie, 1986: 18) subject to a stranger attack. For Christie, the little old lady epitomised the ‘ideal’ victim to meet societal expectations of a victim as pure, innocent and wronged. Van Dijk (2008) reminds us that ‘victim’ derives from the Latin ‘sacrificial lamb’ and suggests that Christie’s idealisation is grounded in Christian theology of martyrdom and forgiveness.<sup>20</sup> By this rationale, a ‘victim’ is recognised as having suffered, is assumed not to seek individual retribution and carries some burden of public forgiveness. His analysis provides some insight into the difficulties experienced by victims of domestic abuse, especially those who retaliate (Dobash et al., 2000; Stark, 2007; Johnson, 2008; Itzin, 2000b: 153, interview with Kennedy QC) and why restorative justice for intimate partner violence provokes such controversy (on victim involvement see Zedner, 2002; on

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<sup>19</sup> Called the Scottish Crime and Victimisation Survey pre-2008.

<sup>20</sup> For a historic overview of the “appropriate victim,” see Dobash and Dobash, 1979: chapter three.

current initiatives see Rossner, 2017; on addressing the sensitivities for victims of sexual violence see McGlynn et al. 2012; and on evidence suggesting it is not appropriate in cases of domestic abuse see HMIC, 2014; Westmarland et al., 2017). Whilst understanding of victimisation has moved on, Christie also warned against the quest for idealism, predicting that it could thwart equality, so that victimisation becomes a delicate balance between sufficient strength to be listened to without compromising sympathy.

The label ‘victim’ has also raised concerns within the legal profession as such an acknowledgement of harm pre-supposes that a crime has occurred before its proof in law (Rock, 2004: 396 quotes Lord Ackner in his observations on Home Office policy *Speaking Up for Justice*, 1998). More broadly, there have been pertinent observations from sociologist Tulloch (2008) on his experience of being injured as a passenger on the tube during the London 7/7 bombings. He eschews the label ‘victim’ as overly subjective and temporally inaccurate, providing examples of being interviewed about the bombings and being portrayed as a victim, but the rest of his day being taken up with lectures, students and research. One must remember this complexity of multiple identities to which individuals relate throughout the later findings chapters.

Within the narrower scope of gendered abuse, many organisations and commentators prefer ‘survivor’ to victim (Jordan, 2004a:12 cites Kelly and Stanko as proponents; see also Burton, 2008 for a discussion; Burman and Gelsthorpe, 2017: 219). Walker (1979:14) explains that defining abused women as victims arose from the original need to identify and highlight the problem. Revisiting her explanation suggests that women’s agency is not eroded or compromised by victim-status: instead it is hidden – or constrained to a Hobson’s choice (Mill, 1869, reprinted 2006:162) - both by the abuse and the wider attitudes of society:

“I label her a victim because I believe that society, through its definition of the woman’s role, has socialised her into believing that she had no choice but to be such a victim.”

Despite a drive to improve victims’ rights, they continue to be framed as fearful, passive and helpless (Van Dijk, 2009) or “constructed as the problem” (Monckton-Smith et al., 2014: 10). Hoyle (2012: 398) identified that such efforts “both expand and render problematic the

concept of victim.” Or, as Hope (2011: 63) put it: “There is no objective, impartial nor universally applicable way of defining who is or who is not a ‘victim.’”

Christie’s description of idealism has been deemed “clearly still both valid and instructive when thinking about victimisation” (Green, 2011: 91). Green observes that: “To be an ideal victim you must not have deliberately put yourself at risk and you must evoke sympathy for your plight.” Thus, to be considered ‘ideal,’ a victim: “must engage with the wider social conditions that shape which people are afforded the vulnerability label” (Green, 2011: 95). This is pertinent in considering the efficacy of the risk assessment and situates the problematic status of women reporting domestic abuse.

Garland (2001: 357) was right that victims’ interests “were subsumed under the general public interest.” This remains accurate, but not only is there now a more nuanced understanding of victimisation, there has also been a change in our understanding of the public interest, which is a shifting social construct (Garland, 2001: 11) and also a discrete personal judgment by police, (Myhill and Johnson, 2016; Barlow and Walklate, 2018), prosecutors (Moody and Tombs, 1982; Duff, 1999; Hawkins, 2003; Ferguson and McDiarmid, 2014) and judges (Hutton, 1999; Jamieson, 2013; Ferguson and McDiarmid, 2014). Thus, whilst the interests of the victim do not stand alone within the court process (Burton, 2008) and are still taken into account as part of the overall public interest test (Prosecution Code, 2018: 7), there has been a shift in *emphasis* to give victims’ views greater weight, largely due to cultural, policy and legislative changes. In England and Wales and the US, the victims’ prominence has been influenced by “a relationship between high-profile, emotive cases and subsequent criminal justice developments” (Duggan, 2018: 165) such as Clare’s Law<sup>21</sup>, Sarah’s Law<sup>22</sup> and Megan’s Law<sup>23</sup> (Garland, 2001: 11; Duggan, 2018: 160), which invoke a symbolic victim to legitimise more punitive measures (Hoyle, 2012: 406).

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<sup>21</sup> The introduction of the Domestic Violence Disclosure Scheme in England and Wales is known as Clare’s Law, after murdered Clare Wood.

<sup>22</sup> A sexual offences register was introduced in England and Wales, under the name Sarah’s Law, after murdered Sarah Payne.

<sup>23</sup> In the US, the sexual offences register is named Megan’s Law, after murdered Megan Kanka.

Beyond the recognition of female victims, the analysis of how women experience victimisation has been more contentious, particularly as a compromise to their individual agency. Reflecting on a key aim of this research to consider appropriate ways to give victims of domestic abuse a voice within the adversarial process, the following section explores understandings of agency.

Victim-focused research mainly concentrates on empowerment and choice. This has created a body of feminist literature on victim 'agency'. Agency can be understood as choice or free will (Dunn and Powell-Williams, 2007) and is difficult to reconcile with notions of victimhood, implicit in the legal response to domestic abuse (Mills, 1998). Dunn and Powell-Williams (2007: 982) explain that victimisation, as a status, is associated with blamelessness; yet if it is asserted that women experiencing domestic abuse have any degree of autonomy or free-will, the old adage of *Why does not she leave?* resurfaces. Epstein (1999: 58) observes that this "assumes a false black-and-white model of human relationships." Similarly, Hanna (1996: 1882) observes that by focusing on the question of why she didn't leave, "we obfuscate the role that the criminal justice system has played in condoning and, in a sense, promoting the violence." The challenge, identified by Picart (2003: 120), is that:

"women are either fully victims or fully agents – and there is no room for an account that tries to capture or even partially describe the chiaroscuro of agency and disempowerment women live from day to day."

In examining victims' experiences of the court process, it will be seen that there are very limited windows of opportunity for victims to exercise autonomy (Hoyle, 2011: 157). This has repercussions for agency, as Schneider (2000: 86) explains:

"Recognition of the existence of both choice and constraint in women's lives, and description of this complexity in both law-making and culture, can move us beyond the dichotomy of victimization and agency that has impeded justice for battered women."

This is the nexus upon which Edwards' (2004: 972) *consultee* or *participator* rights should be understood and upon which Hawkins' (2002: 34) "diffusion of decision-making power" is framed. Edwards' categorisation fails to recognise a simpler right to information, which is

better encapsulated by Cape and Ardill's (2004: 17) distinction between 'procedural rights' and 'rights of participation'. However, it is also helpful to conceptualise victims' rights as rights which improve a victim's role within the court process and those which support their well-being outwith the process (Elias, 1986: 290).

The continuum of discretion means that power rests with those with decision-making authority and not with the victim (Duff and Marshall, 2010: 76). Yet, whilst power monopolies are inevitable to a degree, some agency is, in theory, possible through participation in the process, although victims are currently attributed responsibilities, without corresponding rights. (Duff and Marshall, 2010: 84; Marshall, 2014). Burton (2008: 102) distinguishes between "interests" (which are considered in the public interest test) and "wishes" (which are not relevant to decision-making).

Within a cat-and-mouse construct of the abuser and the abused, there is little room for women to do more than react and respond (Hoyle, 2011). They may recover, move on and thrive later, but when the spotlight of agency support and justice intervention is upon them, they are clearly labelled 'victims' (Sanders and Jones, 2011). This presents conceptual, theoretical and practical difficulties.

Configuring such a binary form between victim and perpetrator is criticised by Baines (2015) as re-enforcing the notion that the 'ideal victim' has no agency, and that a black and white distinction is needed to allow the perpetrator to be "brought under control" (Baines, 2015: 2). This implies that the point at which a person is publicly recognised as a perpetrator, control shifts to the state. This may be accurate within the field of transitional justice within which Baines works. However, it denies the complex relationship between individuals who have had, and may still have, a private, intimate relationship, which is now subject to public scrutiny. There may be state control in the form of an investigation and prosecution, but the power dynamic between those individuals continues. Victims exercise limited agency within the confines of the abusive relationship beyond reporting to the police and the public perception of the 'end' to that relationship.



Westmarland (2015: 39) situates this understanding of agency as a continuum within a broader constraint on women's lives, compounded by physical and emotional abuse:

“The concepts of ‘life space’ and ‘space for action’ being restricted describes how, as fears and threats become more central to a woman's everyday life, she attempts to manage the violence through restraining her own behaviour more and more.”

This layered conceptualisation, whilst helpful, does not account for the added public/private dimension and Davies et al.s' (2014) challenge of responding to criminality “hidden in plain sight.” In developing the implications of a gendered approach to domestic abuse, this thesis attempts to reconceptualise ‘life space’ in a way which conveys these (often competing) tensions in women's lives to more fully understand the meaning of and potential for agency within the criminal justice process.

## 2.2 Victims of Domestic Abuse and the Criminal Justice Response: The Current Picture and Future Possibilities

As victims have gained greater rights and recognition within the criminal justice process, literature has emerged which invites “a more nuanced understanding” (Rock, 2011: 53) of what it means to be a victim and many commentators have highlighted the limitations of the court response (Hoyle, 2011; Walklate, 2007b; Hester, 2013b; Monckton-Smith et al., 2014). The role of the victim is increasingly scrutinised, but the literature remains stubbornly focused on the punctuation marks of public decisions, and the compound nature of decision-making (Hawkins, 2003) seems lost. Hope refers to the “ex post facto” status of victims (2011: 70), underscoring the necessarily retrospective and, to large extent, incident focused, nature of victimhood. Within the court process this makes it difficult to explore lasting effects of victimisation. Moreover, the role of the victim is usually considered in relation to their role at court (Sanders and Jones, 2011) despite the fact that the majority of criminal cases do not proceed to trial (Sanders and Jones, 2011: 282), illustrating that a holistic approach is needed. As a result, the effects of the whole process on the victim have not been fully explored. Nevertheless, there has been some valuable empirical research which provides insight into some aspects of the process, even if key pieces of the jigsaw remain missing.

Pizzey (1974) and the Dobashes (1979) provide a historical picture of an inadequate response by the police and justice agencies to respond effectively to domestic abuse. Edwards' (1989) study of police responses to domestic abuse pre-dates mandatory policies and found a response largely guided by the victim's support for action. Since then, there has been a shift in many jurisdictions towards presumptions in favour of arrest and prosecution (Epstein, 1999: 4; Hoyle and Sanders, 2000: 18). Nevertheless, research has remained largely blind to victims' experiences of the criminal justice process: a detailed appreciation of the human story of what it means to report a private, family crime and the emotional and practical barriers to talking publicly about it in court. Research has instead largely focused on the police response and a socio-legal focus on decision-making within the court process. Underpinning an appreciation of these contributions, however, is the background scholarship on the place of the victim's interest in discretionary decision-making by police, prosecutors and judges.

Monckton-Smith et al.s' (2014) qualitative research with domestic abuse victims and professionals provides a relatively up-to-date picture of policing, safety planning and risk management in England and Wales. It also responds directly to the criticisms levelled at police in the HMIC (2014) report, identifying weaknesses in officer training, collection of evidence and prioritisation of domestic abuse cases (HMIC, 2014: 7). However, it focuses on the first response, rather than the criminal justice actors later in the process. Hilder and Bettinson's (2016) inter-disciplinary study raises the profile of working with perpetrators of domestic abuse and how that links to the victim response, which further evidences the importance of appropriate sentencing.

Hester's (2016) longitudinal study was the first in Europe to look at patterns of domestic abuse perpetrators, by tracking and analysing reported cases over a six-year period (2016: 626). As such, it provides a unique perspective on changes in police attitudes towards domestic abuse, observing that gender-sensitivity developed in some officers dealing with dual-arrests, over the period of the study (2016: 633). This points to some police officers beginning to tackle domestic abuse in a less incident-focused and more nuanced way (For a recent example of benefits of involving police in research and encouraging more informed conversations with officers, see Westmarland et al., 2018).

The most comprehensive British study of the criminal justice response to domestic abuse, which remains valuable twenty years on, adopted mixed methods of police data interrogation, qualitative interviews and participant observation, to present a detailed account of domestic abuse victim's experiences of contacting the police (Hoyle and Sanders, 2000; for a similar, more recent example, see the US study by Buzawa et al., 2017). This led them to advocate a victim empowerment model, in which there is a distinction between mandatory arrest and prosecution; supporting the former, but not the latter (Hoyle and Sanders, 2000: 31). Such policies have been widely critiqued as an infringement of women's agency and choice (Mills, 1998; and Epstein, 1999: 49 calls for "a stronger voice in and control over the process" for victims of domestic abuse). However, there have also been eloquent proponents (Hanna, 1996), including Coker (2001: 857), who identified a link between women's support for mandatory policies and their interactions with police, underscoring the importance of procedural justice. She observed that, "victims may experience mandatory policies in ways that affirm their moral worth." There is some support for this approach (Buzawa and Buzawa, 2013; for a fuller discussion see Buzawa et al., 2017), yet such a victim empowerment model pre-supposes that the interests of the individual victim are primary, focusing on the interests of the current victim, not public policies aimed at protecting future victims by informing cultural shifts. A gendered framing of the problem assumes that the problem requires to be addressed at a societal and not just at an individual level. This highlights the tension within feminist literature between affirming victim choice and situating domestic abuse as a gendered, societal problem. This ongoing struggle for feminist academics trying to reconcile agency and victimisation (Schneider, 2000; Picart, 2003; Dunn and Powell-Williams, 2007) has been explored. Nevertheless, Hoyle and Sanders highlighted some barriers to justice for women who have experienced domestic abuse, including their safety concerns and fear of the consequences of attending court (Hoyle, 1998:189; Hoyle and Sanders, 2000: 24). Importantly, she makes a link between victim engagement in the justice process and appropriateness of sentence (Hoyle, 1998: 191).

A consistent empirical picture emerges of victims ostensibly gaining greater prominence in decision-making, but in reality, feeling disenfranchised and remote from the criminal justice response. One explanation is that the shifting focus to the victim is relatively recent and that,

as much of the research pre-dates many of the current policies, further time is required before meaningful changes are perceived. Hester's longitudinal study (2016) provides some evidence to support this. An alternative explanation, which this thesis seeks to explore, is that the feminist influence on victimology has not yet developed to the extent of fully unpacking the public/private dynamic in domestic abuse cases within the justice process.

Gaps in knowledge and understanding remain. Brooks-Hay et al. (2018) provide current insight into the criminal justice response in Scotland, but their key contribution lies in their contextualisation of domestic abuse as a wider, societal problem and the need for a holistic approach. In addressing responses from health, education, social work, policing and criminal justice, they provide breadth, rather than depth, of analysis.

It has been shown that there is little empirical research on how victims of domestic abuse experience the court process in Scotland and that the mandate for a criminal justice response is far from settled, with ongoing theoretical debates surrounding the public/private dichotomy, state legitimacy and victim choice. Beyond this literature, some insights can be gained from two other areas: first, the emerging body of literature on the framing and defining of domestic abuse as more than physical violence – literature conceptualising 'coercive control' which adds a further dynamic to understood meanings of public and private; second, literature focused on alternative justice solutions, proponents of greater agency and 'voice' for women. Walklate (1995: 184) highlighted the problematic relationship within the court, which compromises women's voices:

“Feminist theory is likely to dismantle the long-standing dichotomy of the devilish and daring criminal man and the unappealing and inert conforming woman.”

She predicted that, “the threat it poses to a masculine criminology is therefore considerable.”

A growing body of literature recognises domestic abuse as a continuum (Kelly, 1987) of coercively controlling behaviour (Stark, 2007) or intimate terrorism (Johnson, 2008). One of the key implications of this literature has been a recognition that existing incident-focused laws fail to fully recognise and criminalise and prove all the ways in which domestic abuse is

experienced. This has led governments to introduce specific offences of coercive control. Scotland has gone further than other jurisdictions to create a specific offence of domestic abuse, as a course of conduct, in the 2018 Act. It represents a unique and ground-breaking law which aspires to better reflect the reality of victims' experiences (for a full discussion, see chapter three). However, the unpredicted and sinister development in domestic abuse cases is that Walklate's "devilish and daring criminal man" may be usurped, not by an assertive and beguiling woman, but by a coercively controlling and seemingly reasonable man, or what Davies (2011b: 117) describes as, "gendered rationality."

The "long, thin offence" (Hester, 2013a) of coercive control is a challenge to the incident-focused criminal justice response to domestic abuse (Holmes, 2016), which has been slow to adapt to feminist understanding of abuse as a 'continuum' (Kelly, 1987). Conceptualisation of coercive control (Stark, 2007; 2009) has improved wider understanding of domestic abuse as a lived experience, supplemented by the typologies of abuse, developed by Johnson (Walker, 1979; Johnson and Leone, 2005; Johnson, 2008).

We have seen that the prolonged, varying and traumatic nature of domestic abuse was articulated as early as the 1970s (Walker, 1979; Dobash and Dobash, 1979). The work of Stark and Johnson represents neat articulations of the problem at the right time. Beard (2017) would probably ruminate on the fact that male voices have been heard, rather than the many talented female academics before them (notably Leonore Walker, Ellen Fisher, Liz Kelly, Rebecca Dobash and Elizabeth Schneider). Commentaries in this debate prior to Stark and Johnson (Edward Gondolf and Daniel Saunders) suggest Stark's call to reignite the feminist movement around this issue was timely (Stark, 2007; for discussion, see Libal and Parekh, 2009).

Stark (2007:228) describes coercive control as the control of an intimate partner by the:

"use of threats to compel or dispel a particular response...forms of intimidation where the threat of force is implied rather than explicit, the mechanisms, effects, and authorship of coercive acts are transparent."

On control, Stark (2007: 229) says: "Control makes up in scope of effect what it lacks in immediacy and is rarely confined to a specific time or space." Combining coercion and

control creates “the condition of unreciprocated authority...and victims experience entrapment” (Stark, 2007: 229).

Johnson (2008) opines that it is no longer acceptable to talk about domestic abuse without first articulating the typology. He identifies four typologies: intimate terrorism (Stark’s coercive control); violent resistance (responding to intimate terrorism, it is mainly perpetrated by women and frequently self-defence); situational couple violence (incident-focused episodes of violence during periods of acrimony within a relationship, there is more gender balance in its perpetration); and mutual violent control (where both partners are violent and controlling). Critically, he separates these typologies from stalking and separation-precipitated violence (2008: 102). Both Johnson and Stark take a gendered approach, identifying that coercively controlling behaviour is predominantly perpetrated by men on women (Arnold, 2009; Anderson, 2009).

Reported cases tend to fall into the first three categories. Johnson (2008) cites a small number of mutual violent control cases. Without further empirical data, it is uncertain whether partners to a relationship can be mutually controlling. Dual-arrests – suggesting violence by both parties – are predominantly examples of situational couple violence, with worrying examples of misinterpreted coercive control (Brooks and Kyle, 2015). Recent research relating to police misunderstanding of coercive control (Myhill and Hohl, 2016; Robinson et al., 2017; Barlow et al., 2018) compounds concern of “specious” complaints (Douglas, 2018: 93) where there is a robust pro-arrest policy (Burman and Brooks-Hay, 2018). This suggests that there has been little progress in the police response in England and Wales from the attitudes highlighted by Edwards (1991), borne out by the HMIC (2014) and narrated by Monckton-Smith (2016), all of which point to police officers “cuffing” or marking domestic abuse cases as “no crime” (Hoyle, 1996; Myhill and Johnson, 2016). Evidence also suggests that dual-arrests are more likely between ex-partners, with alcohol involved, indicative of complex and chaotic separations (Hester, 2013b: 631).

Most analysis critiques an introduction of coercive control into law (Hanna, 2009; Tolmie, 2017; Walby and Towers, 2018; Sheehy, 2018; Douglas, 2018) and/or a discussion of the

legislation in England and Wales (Bettinson and Bishop, 2015; Bettinson, 2016b; Bishop, 2016b; Robinson et al., 2017; Walklate et al., 2018). There has been limited commentary on the likely impact of the 2018 Act in Scotland (Bettinson, 2016b; Tolmie, 2017; Burman and Brooks-Hay, 2018). A specific offence of domestic abuse has symbolic importance but carries risk of over-stating the “educative value” of the criminal law (Burton, 2008: 68). Canadian evidence, where there is an offence of coercive control provides a useful insight into prosecutorial attitude. It found that prosecutors with specialist training on the dynamics of domestic abuse had been criticised for failing to recognise coercive control and exercised zealous tendencies to prosecute only the most serious charge, often an act of violent resistance (Sheehy, 2018:101). This is interesting within the context of Walby and Towers (2018), who prefer “domestic violent crime” to coercive control (Walby and Towers, 2018: 26). This sort of narrow definition feels like a backwards step but there is merit in a continued discussion of the conceptualisation of domestic abuse. This theoretical debate on coercive control is developed in chapter three when exploring the legal response to domestic abuse in Scotland. Within a broader understanding of domestic abuse as a continuum of coercively controlling behaviours and “context-sensitive policies” (Hoyle, 2011: 159), there is greater potential to realise Epstein’s call for “prosecution in context” (1999).

Some recent academic contributions on violence against women have explored how the legal response to domestic abuse could be improved, by developing concepts of feminist jurisprudence (Schneider, 2000), feminist prosecutors (Dempsey, 2009) and feminist judgements (Hunter, 2010). Weaving through this research is the barrier, highlighted by Jordan (2004a), that intimate partner abuse and sexual assaults routinely result in two versions of events, with no independent witnesses, where the perpetrator appears calm and reasonable and the female victim is not heard (Jordan, 2004a; 2004b; 2014). Jordan’s (2004a: 2) assertion in relation to rape could apply to domestic abuse that “the word of a woman against the word of a man is of critical importance.”

A feminist jurisprudence, not dissimilar to “law in context” (Epstein, 1999) emphasises the importance of storytelling. This goes beyond the framing of legal arguments from a feminist perspective and calls for the introduction of feminist narratives to law students. Whilst others have called for the ‘mainstreaming’ of the violence against women policy agenda

(Westmarland, 2015), Schneider (2000) envisages the main-streaming of gendered knowledge through law reform and core legal education and challenges the masculinity of legal doctrine (Schneider, 2000: 104; see also Smart, 1989), which can be seen as a forerunner to the feminist judgements (Hunter, 2010).

Developing this premise, a feminist prosecution asserts that prosecutors of domestic abuse ought to take a feminist stand-point and argues that this could dilute the patriarchal state response (Dempsey, 2009: 158-9). Ascribing to McKinnon's "feminist state" (2009: 222), this raises interesting questions, but is a problematic agenda. The analysis is used as a foundation to justify pro-prosecution policies, a mandate that – as is seen above – is not secure within the broader feminist school. Moreover, she argues that it paves the way for 'victimless prosecutions' or prosecutions which proceed without the evidence of the victim, which contradicts a pro-prosecution mandate, within its current configuration, where the victim's evidence is viewed as best evidence. Nevertheless, read alongside the evolving literature on feminist judgements, it is a useful contribution and, as a former prosecutor, her acknowledged 'researcher effect' informs the current work.

Following Canada, England and Wales, Northern Ireland, Australia, and New Zealand, the Scottish Feminist Judgements Project aims to draft key 'missing' judgements from a feminist vantage point (Hunter et al. 2010; Hunter, 2012; Fitz-Gibbon and Maher, 2015). Published court judgements are rewritten, adopting the law and evidence of the time, to create an alternative 'feminist judgement.'<sup>24</sup> The project is philosophical, educational and thought-provoking with a focus on legal decision-making within a reported case (Hunter et al., 2010). The English judgements have addressed domestic abuse (Burton, 2010). This incident-focus is valuable, but limited, in its challenge to current approaches, as it omits reference to the procedural justice leading up to and during the trial. Thus, there is no analysis of how a jury would be addressed; whether or not there would be judicial objection to pernicious cross-examination; or other matters of procedural justice arising. The effect is that high profile cases which have been criticised for being gender-blind, such as the trials of O.J. Simpson (Ontiveros, 1995) and Oscar Pistorius (Gadd, 2017) would continue to be framed in the same

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<sup>24</sup> <http://www.sfjp.law.ed.ac.uk/> provides an overview of the project. Accessed 13/04/18.



way: the final adjudication is limited by the evidence led and the factors available to take into account. Nevertheless, the feminist judgements represent a novel approach to consciousness-raising of gender-blindness within the court process.

Arguably, the most practical contribution to reconceptualising the justice response in a way more attuned to victims is Burton's (2008) socio-legal analysis of the justice response to domestic abuse, which identifies a comprehensive overview of the decision-makers within the legal system and explains both the criminal and civil law systems to make the case for closer integration, suggesting that for victims there are often "blurred boundaries" (2008: 128). Qualitative research with victims of domestic abuse about their experience of attending court and accessing justice consistently illustrates that victims make no distinction between civil and criminal procedure and that two processes, running in tandem, are a potential barrier to justice (Cook et al., 2004; Robinson, 2007; Burton, 2008). Closer alignment has been described as victims' "best hope" (Robinson, 2007) of a better interaction with the justice process. Empirical data on an integrated approach is minimal, as there has only been one pilot court within the UK.<sup>25</sup> Loosely based on the US model (Simon, 2007:186), its evaluation was tentatively positive (Hester et al., 2008). Whilst it was not subject to the same accusations of bias as its US counterpart (Simon, 2007:186), the sample size was very small<sup>26</sup> (Hester et al., 2008) and the opportunity to understand the full potential of an integrated approach was hampered (Robinson, 2007) by such a narrow data set. However, the potential of integrated, multi-agency family justice centres has been explored (Hoyle and Palmer, 2014).

Duff and Marshall's (2010: 85) criminal legal theory is a bold challenge to the recalcitrance of the adversarial system and seeks to address the traditional public/private dichotomy by mooted a 'a more nuanced system of criminal law' which differentiates between public wrongs in the "strong sense" and "wrongs whose pursuit is left more in the hands of, or subject to the will of, their individual victims." Private wrongs have historically been the matters of tort or civil remedy (Rock, 2011: 38). Duff and Marshall (2010: 75) criticise Christie's (1977) "over-dramatic" assertion that the criminal law "steals" conflict from

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<sup>25</sup> Croydon, 2006.

<sup>26</sup> Only five court users in the first year.

individuals and remain proponents of the state response of public prosecution, as a wrong against the whole community (Duff and Marshall, 2018). However, they assert that the current framework of the criminal justice response is wrong to completely deny provenance or ownership of the conflict to the victim. They suggest a model which differentiates between crimes according to the extent to which they are public wrongs and not according to their severity (Duff and Marshall, 2010) and distinguish between a public response to a wrongdoing and criminalisation (Duff and Marshall, 2018). Their distinctive approach, whilst not completely adopted in this thesis, informs some of the challenge to the current partition between the civil and criminal response.

It is argued that discretion and decision-making must, especially within domestic abuse prosecution, be understood as a continuum (Hawkins, 2003: 187). An integral part of this process for the victim is their expectation of their own role. In this way, procedural justice is important and the role of key actors, such as the police and the prosecutor, matters. The underlying premise of procedural justice is that if it is, “fair, inclusive, and respectful” (Rossner, 2017: 977) individuals are more likely to obey the law. For victims, it is significant to their engagement if they, “feel that they were treated *fairly*” (Bell and Nutt, 2012: 79) and a positive initial encounter with police was found to reduce victim trauma (Elliot et al, 2014). This underscores the link between procedural justice and recognition of emotions (Murphy, 2014: 214). A predominant emotion experienced by many women going through the criminal justice process is fear (Hoyle, 2011: 158; Westmarland et al., 2018: 340). The risk discourse has emerged as the predominant challenge to safety fears.

### 2.3 Risk: Introduction

To explore whether or not the criminal justice response to domestic abuse improves women’s safety, the theme of risk is central. The post-modern language of risk may be relatively recent, but it is pervasive (Sparks, 2000: 129). The relevance and prominence of risk assessment tools to help individual victims and communities to safety plan are explored in chapter three. In critiquing the current practice within Scotland, it is important to understand how such policies have emerged and to contextualise the current focus on numeric risk assessment tools to assess victims’ risk of further harm.

In relation to domestic abuse, there is research on the utility of the risk assessment or ‘RIC’ (Robinson and Howarth, 2012) and the multi-agency risk assessment conference (‘MARAC’) (Robinson, 2004; Robinson and Payton, 2016), but most research focuses on the accuracy of the risk assessment tool in predicting risk (Ariza et al., 2016: 343) and a need for greater empirical scrutiny of the MARAC has been identified (Robinson and Payton, 2016; Cordis Bright Consulting, 2011). A quantitative approach is unsurprising given the actuarial associations with risk. In contrast, qualitative understandings of the impact of risk on individual narratives are less common and tend to focus on the offender (McNeill et al., 2009).

There is a substantial body of literature on the impact of risk theory (Beck, 1992) within criminology (Garland, 2003; Mythen and Walklate, 2006) as a “pervasive condition of late modernity” (Sparks, 2000: 129). Discussion centres around the risk – and fear of – crime (Garland, 2003 and 2008; Stanko, 2000) and the risk of re-offending in theories of penology (Sparks, 2000; Feeley and Simon, 1992 and 1994; McNeill et al., 2009).

Since the early 1990s, risk has become central to most areas of criminological theorising (Loader and Sparks, 2002: 92). Most disciplines of criminal justice practitioners, with pre-existing practices and views, are adopting risk tools. As a result, “we should not expect ‘risk’ always to emerge pristine and unadulterated from the encounter” (Loader and Sparks, 2002: 93). This is narrated by Beck (1992) as a culture of deploying actuarial tools to categorise and prioritise risks whilst also questioning expert views and authority (Beck, 1992: 177). The contradictions implicit in a risk society are clear: just as risks become greater; calculations of risk become more questionable.

Risk has been described as “having a moment” (Mythen and Walklate, 2006: 2) and has been described as a “phenomenon” (Lupton, 2006: 14). This is important in understanding the place of risk assessments within the criminal justice process, but also to recognise that the rhetoric may not endure. Of greater interest is what is next. Risk is not new, but reactions to it and the weight attached to its assessment have shifted. Beck (1992) explained that if we

cease to react to prevent risk – a level of acceptance – then the risk remains, but the ‘risk society’ diminishes.

The risk literature is drawn on here only to clarify understanding of policy evolution and personal experiences. This section reflects on two elements: first, the influence of the risk narrative on the criminal justice process (Walklate and Mythen, 2011 on “the ideational creep of risk”) and how it has affected the way in which domestic abuse is investigated and prosecuted; and second, the impact of the risk-centric approach on victims’ experiences of criminal justice. Whilst sociologists debate the varied ‘meanings of risk’ (Wilkinson, 2006:28), everyday language understanding of risk conveys an expectation of certainty, a managerial approach and – crucially – assumes predictability and invites trust. An increased reliance on the results of a risk assessment within the context of domestic abuse demands closer consideration of *how* and *when* risk is assessed and the implications for victims.

The risk literature within penology identifies increased managerialism in sentencing, which tends to focus on categories of ‘dangerousness’ rather than offender-specific, tailored programmes (Sparks, 2000: 132). Put succinctly, “it is about identifying and managing unruly groups” (Feeley and Simon, 1992: 455). There are parallels to victimology. Victimology dates much later than the new penology (Zedner, 2002; Kearon and Godfrey, 2011), and the introduction of risk assessment tools in domestic abuse cases is yet more recent (Robinson, 2004; Robinson and Howarth, 2012). If victimology is understood to be on a time-lag from the new penology, then the opportunity to learn from earlier misconceptions and avoid similar unintended consequences seems useful. However, evidence of discursive links is lacking, which is arguably a missed opportunity not only for our understanding of the implications of a risk discourse (the practical implications of which are explored below) but also for wider victimological thinking. The scope for victimology to be informed by penology in this way is explored further in the findings chapters and conclusion.

### 2.3.1 Assessing Risk in Domestic Abuse

The paradox of an actuarial system tackling the management of a growing volume of cases, whilst promoting a caring rhetoric of ‘moral punishment,’ is highlighted by Garland (2003) in his echo of Packer’s due process/crime control conundrum (Packer, 1964). The consequence is that there is a sense of “security”, but a reality of “spinning out of control” (Garland, 2003: 1). Yet, in many respects, including domestic abuse, it is little more than a narrative (similar to Loader and Sparks, 2017: 100 on penal populism as ‘discursive framing’): despite measurements of the likelihood of harm, mathematical nods to precision and a false sense of certainty.

An assessment of risk invokes an impression of the specific, the actuarial and the expert and invites public confidence in a time of relative insecurity (Sparks, 2000). It implies a knowledge base and reliable results. The allure of the quantifiable is understandable for statutory organisations such as the police, seeking to meet targets and key performance indicators. Equally, the feminist movement has broadly welcomed formal measures which add credence to domestic abuse as a criminal offence (Hester, 2013a). For the relatively new victim advocates, qualified as Independent Domestic Abuse Advocates (IDAAs), it garners legitimacy in their expertise or “empowerment through knowledge” (Coy and Kelly, 2011: 37). The risk assessment tool was the outcome of documenting 47 domestic homicides and cataloguing the key risk variables (Robinson, 2006b) to develop the CAADA - DASH risk model.<sup>27</sup> Whilst gender-neutral in its framing, the knowledge garnered from it, represents formal recognition of the previously ignored gendered nature of risk (Hannah-Moffat and O’Malley, 2007: 5).

As the risk assessment becomes more prolific and increasingly widely relied upon, yet inconsistent in its application (Walklate and Mythen, 2011), it becomes more important to clarify its foundation and re-explore its suitability for wider purposes and examine its inter-play with other policies (Robinson and Rowlands, 2009: 192). In addition to the Domestic

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<sup>27</sup> Domestic Abuse Stalking and Harassment risk assessment tool, developed by CAADA, now SafeLives. A copy of the form is at appendix six.

Abuse Questionnaire ('DAQ'), the police also conduct risk assessments of perpetrators (Robinson and Clancy, 2015) and refer high risk perpetrators to a Multi-Agency Targeted Abuse Conference ('MATAC'). Little is known about the interaction between the victim-centred MARAC and the offender-focused MATAC. Whilst the police structure (see chapter three) points to a joined-up approach between victim needs and offender management, there is little evidence of replication in the wider partnership model. An opportunity is thus missed not only to better understand early risks objectively, but also to inform court disposals (for example in wider use of electronic monitoring: Graham and McIvor, 2017; Arenas, 2017). This raises an interesting dynamic in the penology/victimology relationship and implications for better appreciating a holistic criminology, which ought to be further developed (Davies and Biddle, 2018).

## 2.4 Conclusion

“although there is a lot of good work happening in Scotland, it is largely undocumented.”

(Greenan, 2004)

This observation continues to resonate, despite the passage of time and the aim of this thesis is to explore how victims of domestic abuse in Scotland experience the criminal justice process. Studies on victims' experience mirror government policy in their focus on the key points of public decision-making, tending to hone in on the key points of arrest, prosecution and the trial. I have argued that this misses the crucial link between them: waiting. In bridging this gap, I have shown that what is needed is a more comprehensive analysis of the victim experience, including the spaces between these punctuation marks, to provide a profounder knowledge of the victim experience.

This review seeks to draw together knowledge from a range of disciplines and deploy a combination of conceptual discussions, to appreciate, holistically, the factors at play in a domestic abuse victim's story of the justice process. It necessarily demands feminist context; an understanding of the violence against women landscape; appreciation of the evolving role

of the victim; consideration of the law in Scotland and tensions around compelling victims' attendance; an introduction to the risk assessment and the multi-agency approach; and consideration of the extant empirical contributions to the specific experience of the domestic abuse victim in court.

This chapter has critically reviewed the feminist literature tackling relative gender-amnesia (Gelsthorpe, 2002; Davies, 2011a), specifically relating to female victims (Walklate, 2007b) in criminological scholarship. It has charted the academic shift by victimologists to study the experiences of victims within the court process, which has led feminists to assert that the social world is fundamentally gendered (Renzetti, 2013: 7). This review has highlighted the key empirical studies on women's experiences of domestic abuse and gender violence, which consistently record sentiments of a lack of voice, insensitivity by criminal justice actors and insufficient appreciation by police officers of the complex dynamic of domestic abuse.

The literature thus far has created a theoretical and empirical framework within which the complex, coercively controlling dynamic of domestic abuse can be understood. It highlights the prominence of the risk rhetoric in securing women's safety. Aims to combine feminism and victimology into a cohesive mode of scholarship remain tense with unresolved debates around the relationship between agency and victimisation. This review suggests that a theoretical starting point to consider domestic abuse victim's experiences of the justice process is to recognise control as a continuum. Similarly, it challenges the dichotomy of the public campaign and the private lived experience of domestic abuse and suggests that critical to understanding the gap, is an appreciation that the narrative is much more complex.

In relation to Scotland, the enthusiasm for public policies and strategies around improving victims' experiences at court highlighted in the next chapter has not invited a corresponding academic contribution: the victim's narrative of waiting for court and going to court has not been heard. Moreover, the studies highlighted here relate to the US and England and Wales. Scotland is a unique jurisdiction and has just passed legislation creating a specific offence of domestic abuse, which illustrates both the need for further Scottish research and highlights the relevance and timeliness of the current study.

In considering what is known so far about the victim's experience of the justice process, the academic literature is only a partial view. The following chapter maps the development of grassroots and formal criminal justice organisations' contributions to domestic abuse policy in Scotland and the societal response to victims of domestic abuse seeking justice. It provides an overview within which to set out the methodological approach of the current research and the data findings which follow.



## Chapter 3: Scotland's Response to Domestic Abuse: A Timeline Review

“History is either a moral argument with lessons for the here-and-now or it is merely an accumulation of pointless facts.”

(Marr, 2008: xxviii)

### 3.1 Introduction

This chapter provides a legal and policy context for the findings chapters which follow. It should be read in conjunction with appendix one. It is divided into three parts. Part one draws on the grey literature<sup>28</sup> to provide a policy overview of Scotland's response to victims of domestic abuse and highlights events and catalysts which frame the current approach. Part two explains the legal and evidential framework within which cases of domestic abuse are currently investigated and prosecuted. Part three looks ahead. It includes an analysis of the 2018 Act, which represents the fulfilment of part of the women's movement's ambition, introduces the language of coercion and control to the legislative and court processes, and outlines how cases will be dealt with in future.

Appendix one charts the events which have influenced victim policy and the policing and prosecution of domestic abuse in Scotland. The chosen entries are necessarily subjective, but are accompanied here by an analysis which provides correlations and links between key events, individual contributions and policy developments. Like the thesis itself, it is a story not only of political will and policy changes, but also a backdrop for individual narratives. As the only attempt to contextualise individual Scottish victim experiences within the broader policy landscape and the only 40 year timeline of policy and law reform relating to domestic abuse in Scotland, it is a useful frame of reference. Not all relevant reforms have been borne out of a *consistent* government agenda and there are times when the agenda competes with

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<sup>28</sup> In the current chapter, it also includes professional observations; conversations with Mhairi McGowan, CEO ASSIST and Inspector Deborah Barton, Police Service of Scotland; and a generously shared letter from Rosemary Whyte, founding member of Rape Crisis Scotland.

other schedules. This reflects the reality of reform as coherently motivated, but messy and piecemeal in reality.

Membership of the European Union (EU) has conferred some legal obligations, including implementation of EU Directives and adoption of EU jurisprudence. The Human Rights Act 1998 was a wholesale adoption by the UK to incorporate the rights set down in the European Convention on Human Rights into domestic law. The convention includes a right not to be subject to torture or inhuman and degrading treatment,<sup>29</sup> but also preserves an individual's right to respect for privacy in their own home.<sup>30</sup> Appendix one shows relevant EU framework decisions which have resulted in substantive changes to Scots Law.

The Scottish Parliament has provoked a general increase in legislation (Chalmers and Leverick, 2013: 376) and adopted a crime control approach (McAra, 2008), which has influenced domestic abuse policy. Bills relating to local issues pass through Holyrood quicker than they would in Westminster (Charles and Mackay, 2013: 602 on the "Westminster drag"). This has resulted in an increase in the number of statutory offences, but not necessarily to a greater number of crimes, as there is some evidence of codification.<sup>31</sup>

This chapter presents an overview of Scotland's response to domestic abuse, from the start of the refuge movement in the 1970s through to the members of the Scottish Parliament giving a standing ovation to the feminist activists who campaigned for a specific offence of domestic abuse in 2018. Space does not permit a detailed narration of all influencing events over a 40 year time-span, but an overview highlights events of social, legal, political and international influence in publicly recognising and criminalising domestic abuse. Whilst intended to show the sweep of progress on a national scale, it is also a story of individuals. Indeed, the blurred identities and intertwined roles of women as academics and activists, "reflects decades of

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<sup>29</sup> Article 3.

<sup>30</sup> Article 8.

<sup>31</sup> E.g. Sexual Offences (Scotland) Act 2009: created new offences, but also created a codification of pre-existing offences, with a shift in the key elements of proof of the charges; for a discussion, see: Renton & Brown's Statutory Offences; Chalmers, 2010.

collaborative research, policy influencing and advocacy” (Scott, 2018: xiii) and complements the analysis in the preceding review.

### 3.2 Timeline Methodology and Parameters

“A timeline of domestic violence would stretch back for millenia.”

(Robinson and Payton, 2016: 249)

The timeline in appendix one was developed to represent the diverse influences on domestic abuse policy in Scotland and where this has led to a change in relation to victims more generally. It starts with the opening of the first refuges in Scotland in 1973, mirrors the 40 year lifeline of SWA (Scottish Women’s Aid, 2017), and projects to the end of the next Parliamentary session in 2019. It plots external drivers (International; EU; and UK), legislative change, policy decisions, social change, and academic findings. It was created using a documentary analysis of: government publications, third-sector campaigns, research findings, case law, legislation and media reports. To assess the, “authenticity and usefulness” of sources (Bowen, 2009: 38), as well as their impact on future events, I cross-referenced assertions of fact and academic opinion with professional experience of the practitioner’s reality. This breadth permits a critical, socio-legal analysis (Lacey, 2002: 265) of ‘what works’ and why.

Such a linear representation is subjective. However, identifying links between key moments and catalysts for change in the past may make it easier to predict the shape of future steps. If academic research findings are going to inform public debate and influence policy, then arguably they need to be timely: triangulation of the qualitative interview data with a documentary analysis which presents a long lens view of government policy and drivers for change and should help to delineate between conclusions which are theoretically sound and those which are potentially deliverable (Dobash and Dobash, 2000: 187).

The aim of the timeline – beyond an analytical tool and educational framework – is to contextualise the qualitative interview data (Bowen, 2009). The voices of individuals can be powerful, but they are more relevant when they are situated within the perspective of their social and political landscape (Mason, 1996: 37). Thus, it informed the methodological approach to the interviews for this research and the questions asked, and it set the scene for analysis of the data. For example, it informed a better understanding of the early years of struggle encountered by support organisations and the personal commitment and leadership of women who had themselves been subject to abuse. This highlighted to me the possibility that my chosen gatekeepers may have been victims. Similarly, charting policy implementation shows how the language of the current strategy, *Equally Safe*, (2014; 2016c), which shifts towards a human rights focus of broader equality, will infiltrate the work of organisations in the field and I mirrored that language in my interview questions.

The creation of the Scottish Parliament in 1999 was a key structural change in Scotland. This was as an impetus for: more inclusive politics (Charles and Mackay, 2013: 608); a less hierarchical approach to governance (Charles and Mackay, 2013: 611); increased legislation and criminalisation (Chalmers and Leverick, 2013: 376); ‘victim’ (Garland, 2001: 11) or ‘identity’ policies (Rock, 2004: 334); and arguably a ‘clique’ of key players (Bumiller, 2008).

Devolution also spurred greater activity in the area of domestic abuse and therefore the period since 1999 is a particular focus of the timeline but it is important to consider the changing landscape and the links between key events in the slow build up to the Scotland Act 1998. A chronological approach facilitates this.

The opening of the refuges link to a period of welfare politics and a feminist discourse (Dobash and Dobash, 2000: 189) which show the impact of the early campaign around gender equality. Mirroring – and overlapping with – this early feminist campaign are the academic contributions charted in the preceding chapter; namely the growth of a feminist criminology (Renzetti, 2013: 8; Davies, 2011b: 88) and victimology in the early 1970s (Zedner, 2002: 419), concurrent to a shift to post modernity and a crime control model of governance in the ‘risk society’ (Beck, 1992).

The chronological mode of analysis makes it possible to explore whether the early feminist movement became possible because of this shift. The analysis suggests that a pre-occupation with risk informed the current multi-agency model, where risk assessments are favoured in the identification and management of domestic abuse cases.

In creating the timeline, I aim to adopt a methodology which is sympathetic to the very dynamic of the abuse itself. It is a deliberate attempt to view domestic abuse in Scotland as a *continuum* and not purely incident-focused: if the theoretical basis of this research mirrors the nature of the offence, perhaps the solutions will be more appropriate (Hester, 2013a).

### 3.3 The Early Years of Consciousness Raising

Consciousness-raising can be understood as an early period of forging collective goals, recognising inequalities and identifying common ground (Renzetti, 2013: 3). It is a period of reflection and foundation-building which, whilst useful (Browne, 2016), is distinct from later periods of awareness-raising to a wider audience.

A key achievement of the Women's Aid movement in Scotland has been cited as establishing that domestic abuse exists (Cuthbert and Irving, 2001: 60), and the broader feminist movement has identified men as the primary perpetrators (Itzin, 2000a). This is a reminder of their starting point, but it is important to understand their link to 'second wave' feminism (Cuthbert and Irving, 2001) and their part in a broader campaign for gender equality (Christianson and Greenan, 2001), including the Women's Liberation Movement, which found its roots in the Suffragettes (Browne, 2016). Thus, the feminists of the 1970s were not "radically new and different," but part of a longer, historic struggle (Browne, 2016: 5).

The opening of the first refuges in 1973 in Glasgow and Edinburgh was followed by the creation of Rape Crisis centres in Glasgow and Edinburgh in 1977. It is interesting that funding was made available to refuges at that particular time – when there was political unrest; a build up to strike action (Marr, 2008) and the beginnings of crime control governance (Simon, 2007). Following the general election in 1979 and a change in

government, funding was not prioritised and the 1980s reflect a relative lack of progress for victims' movements (Rock, 2004): the victim remained almost invisible in the court process (Shapland, 1986). Nevertheless, it was a period of consolidation and mobilisation for organisations within Scotland, focused on local government campaigns (Breitenbach and Mackay, 2001). Moreover, there was some legislative and court success. The introduction of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 allowed married and unmarried women to have an abusive partner excluded from the matrimonial home. *H.M.A v. Duffy*<sup>32</sup> was the first prosecution for marital rape in Scotland, leading to a legal precedent being set in *S (Stallard) v HMA*,<sup>33</sup> which criminalised marital rape in 1989.

Like many movements, the early impetus did not extend to a coherent approach of how agencies would interact. Whyte (2016), one of the founders of Glasgow Rape Crisis, wrote that a local women's centre was:

“not terribly friendly towards us initially. I think they considered us cheeky young pups for starting a women's group without their knowledge or permission...I must admit that we probably caused them a lot of concern with our naivete and our wish not to be integrated with their centre. As in all of these things, the main problem was communication and when we finally met with the women at the Women's Centre we found them helpful and supportive and they discovered that we held very similar views to theirs.”

Compounding the tensions of interaction were the issues of identity and corporate governance. Women's Aid groups were committed to creating a consortium of autonomous collectives and the avoidance of a 'male' hierarchical structure (Cuthbert and Irving, 2001:57). This caused struggles to maintain their individualism and integrity of purpose to support individual women, whilst engaging in policy discussions and lobbying for legislative change in a joined-up way; their lack of coherence may have stalled progress through the 1980s (Kerr and Jennings, 1990: 48).

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<sup>32</sup> [1983 S.L.T. 7](#); 1982 S.C.C.R. 182.

<sup>33</sup> [1989 S.L.T. 469](#); 1989 S.C.C.R. 248.

After the funding crises and turf-wars which punctuated the early years (Breitenbach, 2001), by the 1990s there was a stronger, more coherent movement (2001: 77) which was more engaged in the state response (2001: 87), although the non-prescriptive and non-hierarchical ethos of Women's Aid means that there will always be autonomy in local groups and, thus, views are not always aligned (Cuthbert and Irving, 2001). By 1990, there were 37 Women's Aid groups in Scotland (Arnott, 1990: 79) and the radical, influential 'Zero Tolerance' awareness-raising campaign in 1992 helped to shift the rhetoric with slogans including: "There is never an excuse" or "No Man has the Right" (Mackay, 2001: 107).

The women, who in the 1970s met in someone's living room with a concerted will to do good, but knowing little (Whyte, 2016), and some of whom were victims themselves, have become the leading figures of the organisations and the academic contributors in this field (Browne, 2016). Whilst the women's movement in Scotland made a significant contribution over 40 years through increased central governance and engagement in multi-agency working, the simple women-helping-women-helping women model (Scottish Women's Aid, 2017) is still at its heart.

### 3.4 The Influence of the Scottish Parliament and the Emerging Professionalisation of Women's Groups

Devolution was structurally important in strengthening the autonomy of the legislative process (Charles and Mackay, 2013: 608) and influenced the pace of change in relation to victim policy in general, and domestic abuse policy in particular. It has been attributed to, "more participatory political and institutional formations" (Burman and Johnstone, 2015: 47). Domestic abuse was debated within its first parliamentary session (Mackay, 2010: 374), and a National Strategy to Address Domestic Abuse in Scotland was published to coincide with the new Parliament (Mackay, 2010: 372). This period coincided with a threat to funding of some Women's Aid groups, and SWA saw an opportunity to lobby the new Parliament for core funding (Scott, 2018: xi). Their prominent march along Princes Street in Edinburgh in spring 1999 (Scottish Women's Aid, 2017) appeared to effect almost immediate change and, certainly, protection of women and children was a topic around which the whole Parliament could coalesce. However, reviewing the timeline in appendix one shows that the pre-cursor

to the debate, and the subsequent development fund, was the ground-work on the National Strategy, which had been carried out by Anne Smith, QC<sup>34</sup>, as early as 1998 (Greenan, 2004: 9). The workplan of the Scottish Partnership on Domestic Abuse<sup>35</sup> was commissioned by the Scottish Office<sup>36</sup> (Greenan, 2004: 11; Scottish Executive, 2000; para. 1.2) and highlighted the need to develop a national strategy to tackle domestic abuse. Its purpose was to, “address and prevent domestic abuse, and to identify the ways in which services should develop, as well as raising awareness of the nature of domestic abuse” (Scottish Executive, 2000).

Since the National Strategy’s publication in 2000, consistent policies have evolved within a robust framework on domestic abuse. It initially adopted the 3Ps (Prevention, Protection and Provision) from the ‘Zero Tolerance’ campaign (Greenan, 2004), which continue to form the foundation of policy, although by 2009, a fourth ‘P’ of Participation had been added (Scottish Government, 2009). The National Strategy in 2000 (and 2004) recognised that domestic abuse ought to be viewed as “part of an overall strategy” to tackle violence against women. It was augmented by the Domestic Abuse Service Development Fund (Greenan, 2004). Critically, it required local government to work in partnership (Greenan, 2004), which has influenced the strong multi-agency response to domestic abuse now in evidence (Robinson, 2006a; Lombard et al., 2013; Brooks-Hay, 2018: 29).

The tone of the new Parliament and cross-party commitment to tackling violence against women, were clear from the outset. The law and policy in Scotland have been influenced, sometimes slowly, by European and International conventions and jurisprudence. The UN Declaration on Violence Against Women in 1993 contributed to understanding gender violence as “a cause and consequence of gender inequality” (Westmarland, 2015) and informed the Scottish definition of domestic abuse. The UK commitment to the Beijing Platform for Action in 1995, to promote women’s human rights, has also influenced the pace of policy development in England and Wales, and Scotland (Matczak et al., 2011: 3).

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<sup>34</sup> Now The Right Honourable Lady Smith QC, Judge of the Supreme Court.

<sup>35</sup> 27/10/99: Initially named the National Strategy on Domestic Violence, before being changing to Domestic Abuse.

<sup>36</sup> Henry McLeish was Minister of State for Scotland, in Westminster in 1998 and helped navigate the Scotland Act 1998 through Westminster. He announced the intended Scottish Partnership on Domestic Violence (subsequently the Scottish Partnership on Domestic Abuse) on 19 June 1998 (Scottish Executive, 2000).



However, commentary is divided on the extent to which devolution has exploited the opportunity for ‘progressive politics’ (Poole and Mooney, 2005: 21). Despite a vigorous legislative programme (Chalmers and Leverick, 2013: 376), there is some criticism that the opportunity to craft tailor-made, responsive legislation and engage communities in the creation of welfare policies has not been fully exploited (Mooney and Scott, 2005; McAra, 2008) pointing to copy-cat policies and pro-forma legislation (Croall, 2005: 177). There is some evidence that drafters are more comfortable borrowing terminology from statutes with a low record of appeals, rather than using innovative language to address new modes of offending.<sup>37</sup> Scotland may seem to have followed the CPS lead on some recent policy and legislation,<sup>38</sup> but there are other examples of Scotland setting the agenda.<sup>39</sup> The creation of offences through statute, rather than evolution of the common law, is a shift influenced by EU and other UK jurisdictions (Jackson and Summers, 2012). However, other commentary points to Scotland as a front-runner with a “distinctive approach” (Burman and Johnstone, 2015: 47) to law and policy tackling violence against women, largely credited to the devolved Parliament (Burman and Johnstone, 2015), suggesting that Bettinson’s (2016b) article, which asks if Scotland should follow the path of England and Wales, could be reframed. Such mixed reports on the wider impact of devolution demand critical academic commentary, without an assumption that it has positively influenced broader social policy (Mooney and Scott, 2005: 9).

The multi-agency approach in Scotland has been informed by the Duluth model of a coordinated community response to domestic abuse (Shepard and Pence, 1999; Pence and McDonnell, 2000). It has also been influenced by the “complicated architecture of multi-level Government” (Brooks-Hay et al., 2018: 5) resulting from the devolved parliament and its relationship to local government. Local partnerships are encouraged to deliver national

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<sup>37</sup> The Abusive Behaviour and Sexual Harm (Scotland) Act 2016, section 2 creates an offence of sharing intimate images, so-called ‘revenge pornography.’ The wording is borrowed from the seldom appealed Civic Government (Scotland) Act 1982.

<sup>38</sup> For example, Clare’s Law piloted in Greater Manchester, Nottinghamshire, West Mercia and Wiltshire for 1 year before being rolled out across England and Wales on 8 March 2014. The Disclosure Scheme for Domestic Abuse in Scotland (DSDAS) was piloted in Aberdeen and Ayrshire, before being rolled out in July 2015; and the introduction of an offence of intimate image abuse (‘revenge pornography’):

<sup>39</sup> For example, an offence of domestic abuse: Serious Crime Act 2015 England & Wales came into force in December 2016, creating the narrow offence of coercive control, but, following the Scottish Parliament’s introduction of the Domestic Abuse (Scotland) Act 2018, the UK Parliament is now consulting on similar legislation: <https://consult.justice.gov.uk/homeoffice-moj/domestic-abuse-consultation-short-version/>

outcomes (Greenan, 2004). The specific commitment of the National Strategy (Scottish Executive: 2000; 2003a) was a key driver, further influenced by the Concordat agreement reached between COSLA and the Scottish Government, in 2007, which defined a closer relationship between local authorities and Holyrood (Scottish Government, 2007).

The Concordat structure<sup>40</sup> encourages closer relationships between central and local government, but not necessarily a consistent approach. The lack of a joint philosophy in a multi-agency response can breed tensions (Shepard and Pence, 1999) and explains some of the discomfort associated with activist workers, through stakeholder engagement, aligning with the ‘insider’ (Cuthbert and Irving, 2001: 58) criminal justice agencies (Bumiller, 2008). Nevertheless, grassroots agencies supporting women who have experienced domestic abuse have evolved as ‘critical friends’ to formal justice agencies and continue to play a key part in informing policy and law reform discussions in Scotland.

The ‘success’ of many victims’ organisations in Scotland has been attributed to the devolved power of the Scottish Parliament to facilitate greater access for now established third sector organisations to participate in policy-making (Charles and Mackay, 2013). An SWA worker was seconded to the Scottish Executive in 2001 (Mackay, 2010: 374), and they continue to be represented on the parliamentary cross-party working group on violence against women and girls, along with other organisations, including: Rape Crisis, ASSIST, and Engender.<sup>41</sup> The implication of a seat at the table is the uncomfortable mainstreaming of many grassroots organisations. Schneider (2000: 196) calls this the “murky middle ground between total rejection and total endorsement of working with the state.” This has led to a sometimes uncomfortable allegiance with statutory agencies (Cuthbert and Irving, 2001: 58). The *quid pro quo* of the victims’ movement achieving their goal of greater recognition of victims within the court process is that they are called upon by criminal justice practitioners to engage women in the process, in what Simon (2007: 189) describes as a “reciprocal involvement” and Walklate (2007b: 49; see also Walklate, 2014) refers to as the “imaginings” of feminist campaigners, reflecting the needs of the criminal justice process as

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<sup>40</sup> A copy of the agreement between Scottish Government and COSLA is available at: <https://www.gov.scot/resource/doc/923/0054147.pdf> Accessed 31/08/18.

<sup>41</sup> For a membership list, see webpage at: <http://www.parliament.scot/msps/mens-violence-against-women-and-children.aspx> Accessed: 11/06/18.

victims' voice. It can also be interpreted as part of an institutional advocacy role, which is explored below. Feminist organisations are increasingly under internal and external pressure to 'professionalise' (Bumiller, 2008: 65), a theme explored in chapter five in my interviews with support workers. The tensions on these organisations to preserve their identity, drive their agenda and work within the wider landscape are not new, being forecast by Pizzey (1974) and in evidence in the work of the Suffragists (Marlow, 2000). This tightrope between engaging with the statutory machinery in criminal justice (and other areas) and maintaining autonomy has an interesting parallel with the experiences of the women they represent: individual victim agency, which mirrors the 'outsider' experience of support organisations, is explored further in chapter seven.

### 3.5 A Scottish Strategy for Victims and the Introduction of Victim Information and Advice

Concurrent to greater public awareness of domestic abuse, there has been an increased focus on victims of crime more generally. In 2001, the EU Framework<sup>42</sup> decision on victims imposed an obligation on the UK to implement legislation to provide a legal framework of rights for victims of crime. This was not translated into domestic law until the 2014 Act, which is discussed below. Nevertheless, the Scottish Executive's publication of a Scottish Strategy for Victims (2001) can loosely be linked to the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985).<sup>43</sup> The Scottish Strategy had three aims:

- (i) To provide for the emotional and practical support needs of victims;
- (ii) To provide for the information needs of victims; and
- (iii) To encourage greater participation in the criminal justice system.

The strategy was part of an increasingly joined-up approach and linked well to the National Strategy on Domestic Abuse. It also brought the criminal justice response into focus by highlighting the prosecution's pilot victim information service. The Victim Liaison Office

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<sup>42</sup> DIRECTIVE 2012/29/EU, available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029> Accessed : 23/04/18.

<sup>43</sup> <http://www.un.org/documents/ga/res/40/a40r034.htm> Accessed 21/04/18.

was piloted in Hamilton and Dundee in 2002. A roll-out of the re-configured Victim Information and Advice (“VIA”) was complete in 2004. Their role is to provide timely case-specific updates to victims and witnesses, such as court dates at each stage of the process, and any decision or outcome.<sup>44</sup> They are based within COPFS offices, and administrative members of COPFS are seconded to them, but they operate a stand-alone service. Whilst they are not routinely represented at stake-holder meetings to inform partnership working at a policy level, they provide a valuable route into COPFS for many outside agencies supporting victims on an individual case basis. Despite this established position and their contribution, there has been little scrutiny of their function. The Inspectorate of Prosecution in Scotland<sup>45</sup> conducted two joint thematic reports with HM Inspectorate of Constabulary for Scotland (2010; 2011) and assessed treatment of victims in summary cases against the core objectives in the Scottish Strategy (Scottish Government, 2001). Ten years on, they found a good level of service provision. Unsurprisingly, they found that whilst the first two objectives had been met, more was needed to enable victims’ greater participation in the criminal justice system. They made specific recommendations in relation to police tackling of repeat victimisation and found some evidence of under-referral to VIA by prosecutors.

### 3.6 A Specialist Domestic Abuse Court: The Product of Concerted Violence Against Women and Victim Policies

The emerging commitments to victim policies and tackling domestic abuse led to the introduction of the pilot specialist court in Glasgow in October 2004. In turn, it influenced the development of multi-agency working to tackle domestic abuse. As shown on the timeline, its introduction followed pilot drug courts in Glasgow (2001) and Kirkcaldy (2002) and a youth court in Hamilton (2003), which respectively received positive evaluations (Eley et al., 2003; McIvor et al., 2006; McIvor, 2009a). However, whilst academic analysis of the Drug Courts focused on the benefits of specialism and an approach which harnessed a therapeutic approach and focused on procedural justice (McIvor, 2009b), the Youth Court

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<sup>44</sup> Information on the role of VIA can be found at: <http://www.copfs.gov.uk/involved-in-a-case/victims> Accessed 04/04/18.

<sup>45</sup> Created on an administrative basis in December 2003 and is part of the Scottish Government but independent from COPFS. It is headed by HM Chief Inspector who reports directly to the Lord Advocate. Criminal Proceedings etc. (Reform) (Scotland) Act 2007, Part 5 (sections 78 and 79) made the role statutory.

was criticised as being “a punitive excursion” and a return to pre-Kilbrandon<sup>46</sup> days (Piacentini and Walters, 2006). Nevertheless, these courts, particularly the Drug Court, continue to be recognised as representative of a specialist, problem-solving approach to discrete types of offending/offender which is largely positive (Centre for Justice Innovation 2016; 2017).

Five<sup>47</sup> specialist domestic violence courts in England and Wales adopted three different models – fast-tracking, clustering, and tailored specialist courts – depending on the size and caseload of the jurisdiction (Cook et al., 2004). Their success influenced the introduction of the Scottish court (Robinson, 2006a). The key components of a specialist domestic abuse court have been identified in Scotland as: victim and child safety; keeping the victim informed; information sharing and informed decision-making; institutional coordination of procedures and protocols; training and education; judicial leadership; effective use of the justice system; and evaluation of protocols/procedures (Connelly, 2008). “Effective” is not defined (Hester and Westmarland, 2005) and Cook et al. (2004)’s more exhaustive list is preferred, as it includes access to advocacy services, *ongoing* training and specialist personnel. Cook et al. (2004) astutely observe that the drawback to such evaluation processes is that the parameters of ‘measures’ of success are imposed by the government instructing the evaluation. As a result, some of the positive highlights of the Scottish pilot (Reid Howie, 2007) are missing components in the 2008 report. For example, there was a shift from *specialist* staff to *trained* staff; a seemingly minor policy refinement, which has significant repercussions in practice.

The Scottish domestic abuse court pilot in 2004 (Reid Howie, 2007; Forbes, 2006), was based on similar principles to Croydon, West London (Cook et al., 2004), but the court sat daily with one designated prosecutor and three specialist Sheriffs on rotation.<sup>48</sup> During the

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<sup>46</sup> The Kilbrandon report (1964) influenced the introduction of the Children’s hearing system in Scotland and a more welfare-based approach to youth offending.

<sup>47</sup> Cardiff, Derby, Wolverhampton, Leeds and Croydon, West London.

<sup>48</sup> A fourth sheriff joined within the duration of the pilot and the evaluation refers to four sheriffs within the court (Reid Howie, 2007).

pilot, cases typically called for trial within six weeks of the initial report to the police and the rate of guilty pleas was higher than in a mainstream summary court (Reid Howie, 2007).<sup>49</sup>

The court was supported by the introduction of an advocacy service, ASSIST, implemented by the Glasgow Violence Against Women Partnership, with funding from the Scottish Executive (Robinson, 2006a). ASSIST was tailor-made to support prosecution of domestic abuse by assisting, advising and supporting victims through the court process. It adopted the Joint Protocol definition of domestic abuse and supported men and women, although the majority of its staff and clients are female.<sup>50</sup> ASSIST provides independent support and has a dual function: individual advocacy to help victims through the court process; and institutional advocacy, to improve policy and practice in relation to the court response to domestic abuse. The scoping exercise for a National advocacy service identified that there was no clear definition of advocacy and that it was interpreted differently across the sector (Blake Stevenson, 2017). Key components of individual or operational advocacy are identified as independence, risk assessment, safety planning, explanation of the court process and information provision and speaking for the victim. This is consistent with ASSIST's approach. Additionally, they fulfil an institutional advocacy role. This is often described as a "strategic" role (Blake Stevenson, 2017) and is understood to be action taken by advocates to raise the profile of systemic, rather than individual issues. For example, highlighting ways in which processes might be improved (Howarth et al, 2009; Coy and Kelly, 2011). Whilst this is a key component of ASSIST's institutional advocacy role, it must also be recognised that they advocate the benefits of the criminal justice response to their clients. In this way, there are two dimensions to their institutional advocacy role: to highlight to criminal justice agencies and policy-makers the collective needs of their clients and to represent to their clients, the importance and benefit of the criminal justice response. These are distinct, yet intrinsic, to ASSIST's institutional advocacy role. Such an approach is contested by other agencies which would refute the ability to fulfil this role independently.

Its individual advocacy role extended from the original pilot area to cover greater Glasgow in 2009, before a subsequent roll-out into 12 local authority areas across Lanarkshire, West Dunbartonshire, Renfrewshire, Inverclyde and Ayrshire in 2012. With the exception of a

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<sup>49</sup> 86% cases resulted in conviction, compared to 77% in a mainstream court. In the pilot court, 10% cases were deserted or not called at court, compared to 17% in a mainstream court (Reid Howie, 2007: 39).

<sup>50</sup> ASSIST currently employs two men. Male clients represent an average of 5-8% of their cases.

cluster-court in Ayr, there is no specialist court structure in the areas of extended advocacy provision and the opportunity for a national advocacy model was missed at this point. The role of the advocate has, however, developed and expanded across organisations with the introduction of a formal training programme in victim advocacy, introduced by SafeLives, formerly Coordinated Action Against Domestic Abuse ('CAADA'),<sup>51</sup> which has increased the prominence of the risk assessment as a means of assessing safety needs and has professionalised the role of an Independent Domestic Abuse Advocate ('IDAA'), known as IDVAs<sup>52</sup> in England and Wales. There are currently three court advocacy services in Scotland, in addition to ASSIST, which cover Edinburgh,<sup>53</sup> Livingston<sup>54</sup> and Selkirk and Jedburgh.<sup>55</sup> Despite Scottish Government funding<sup>56</sup> for support workers across the third sector to obtain the IDAA qualification,<sup>57</sup> the possibility of a National Advocacy service was not re-visited until 2017, when ASSIST chaired a scoping group, alongside the commissioning of a national advocacy project report. Progress has been constrained by inter-agency disputes over the best model with some proponents of a more flexible model, less aligned to the formal court structure, rather than a national ASSIST service. This highlights the tensions that can emerge between multi-agency working and individual agency ethos.

Following the pilot court, a scoping exercise was commissioned by the Scottish Executive to explore the feasibility of a national roll-out. With the flexibility of different models – cluster courts in smaller areas – a recommendation was made in favour of specialist court provision across Scotland (Connelly, 2008). Despite this endorsement and a clear framework for implementation, there are still only two specialist courts in Scotland in Glasgow and Edinburgh, with cluster courts in Ayr, Livingston, Dunfermline and Falkirk.

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<sup>51</sup> Further information can be found at: <http://www.safelives.org.uk/about-us/our-history-and-impact> Accessed: 31/08/18.

<sup>52</sup> Independent Domestic Violence Advocate.

<sup>53</sup> Edinburgh Domestic Abuse Advocacy and Court Support (EDDACS).

<sup>54</sup> Domestic Abuse Sexual Assault Team (DASAT).

<sup>55</sup> Domestic Abuse Advocacy Service (DAAS).

<sup>56</sup> £468,363 between 2011-16.

<sup>57</sup> There are 270 IDAAs in Scotland as at 01/09/18 (information provided with thanks from IDAA Coordinator, Scotland).

The introduction of the specialist pilot court helped to improve multi-agency relationships (Robinson, 2006a); this mutual support was further strengthened when ASSIST co-located with the police domestic unit in 2012. Support for specialist domestic abuse courts is not unanimous. Accused (Reid Howie, 2007: 38) and their representatives<sup>58</sup> have raised concerns about fairness to their clients, and Hoyle (2011: 158) found that half of victims in a Specialist Domestic Violence Court ('SDVC') in England retracted their statement, despite evidence of a strong multi-agency approach.

The CHANGE programme, inspired by the Duluth model (Shepard and Pence, 1999), was the first structured deferred sentence specifically for perpetrators of domestic abuse in the UK. Appendix one shows its introduction in Stirling in 1989. It aimed to challenge offending behaviour and negative gender attitudes and was adopted in Glasgow to provide appropriate sentencing options for the specialist domestic abuse court. Further programmes have now been developed, including the Caledonia programme (Ormston et al., 2016) which links to a service for women and children. Whilst these programmes may include an element of judicial supervision in the form of a review, they do not extend to structured judicial monitoring, as seen in problem-solving courts (Centre for Justice Innovation, 2016).

More than a decade after the introduction of the pilot court, the opportunity for a national model has been missed. The financial crash of 2008 contributed to a significantly constrained budget for public services, which impacted on all aspects of criminal justice, including the specialist court (BBC News, 2010; Bettinson, 2016a) and Scottish Courts and Tribunal Service ('SCTS'). Within the context of rural court closures (SCTS, 2016), expanded jurisdictions and co-located personnel, it is harder to make the argument for greater specialism (for arguments in favour of specialism, see Centre for Justice Innovation, 2014; 2015), although the planned custom-built justice centre in Inverness offers an opportunity to facilitate support services within the court building (SCTS, 2018). The budget for violence against women has recently increased, but funding has been focused on front-line service provision (Scottish Government, 2017).<sup>59</sup> Paradoxically, however, new problem-solving

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<sup>58</sup> BBC: "Inside Scotland's Domestic Abuse Court", BBC News, 11 May 2010, available at: <http://news.bbc.co.uk/1/hi/scotland/8672758.stm> Accessed 28/03/18.

<sup>59</sup> <https://beta.gov.scot/publications/vawg-fund-2017-2020/> Accessed: 22/04/18.



court initiatives continue to emerge in pilot format<sup>60</sup> since former Lord Advocate Dame Angiolini's endorsement of the model in 2012 (Scottish Government, 2012). This may offer greater hope of a more specialist approach to domestic abuse but they may not be prioritised, possibly due to their victim rather than offender focus.

Problem-solving courts have been described as “putting judges at the centre of rehabilitation” (Centre for Justice Innovation, 2015). Their focus is on procedural fairness to the accused and a structured, supervised – in court – rehabilitation programme. Distinct from other approaches, the key tenet of a problem-solving court is that the accused is required to accept a structured deferred sentence programme and appear before the sentencing sheriff/judge at regular intervals to account for progress. Hybrid to the specialist court approach, the same sheriff/judge will usually preside over the court, so that there is a consistent sentencing approach.

Whilst there has been no re-examination of the Scottish courts, two anecdotal differences can be observed between the current specialist courts in Scotland and the original pilot.<sup>61</sup> First, the average time from initial report to conclusion of the case is likely to be several months and adjournments are now common. Second, initial case marking decisions have been moved from the specialist domestic abuse unit attached to the court to a centralised hub. Whilst cases are only marked by prosecutors with specialist training on domestic abuse, case ownership and a degree of specialism have been lost. Given the barriers faced by women in attending court (Hoyle, 1998) and the evidential challenges in proving domestic abuse cases (Monckton-Smith et al., 2014), this is a worrying development. More positive, is the multi-agency response which has built up around the court and the strong working relationship between the police and the prosecution (Bettinson, 2016a).

The stuttering progress of the specialist domestic abuse court has affected individual women reporting domestic abuse as they are unlikely to face a specialist prosecution response and their experience of the criminal justice process is likely to be protracted. However, on the

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<sup>60</sup> A community project in Aberdeen; an alcohol court in Edinburgh and Glasgow; and the Glen Isla project in Forfar.

<sup>61</sup> These anecdotal observations are based on my professional experience as the first full-time prosecutor in the pilot court (2004-2006) and subsequently returning to the domestic abuse court in Glasgow (2016-2017).

public stage, it has influenced the multi-agency approach to domestic abuse. This has been conducive to other innovations for dealing with domestic abuse, including the Multi Agency Risk Assessment Conference ('MARAC').

### 3.7 MARAC

The MARAC started in Cardiff in April 2003, following the introduction of the Victim Risk Indicator Form in 2002 (Robinson, 2006b), whereby a set of questions was asked by officers responding to domestic abuse reports. The form included risk indicators for harm, based on analysis of domestic homicides. Developed as part of a wider public protection response to violent and sexual crime, under the umbrella of the Multi-Agency Public Protection Arrangements ('MAPPA'), initial evaluation was positive (Robinson, 2004), and it was found to improve information-sharing, inter-agency accountability, victim safety and awareness about children (Robinson, 2006b). Those assessed as being at significant risk of further harm<sup>62</sup> are referred to a multi-agency conference to facilitate discussion between key agencies (police, probation, health, child protection, housing, social work, prosecution, IDAA and others) on options for increasing the safety of the victim and develop a co-ordinated action plan.

MARAC research has observed the benefits of measuring risk (Hester and Westmarland, 2005) and managing safety, which has led to a roll-out across England and Wales and adoption of a similar model in Scotland. Robinson, who evaluated this model in Cardiff, also evaluated ASSIST in Glasgow (Robinson, 2006a), where Multi-Agency Action Planning ('MAAP') was introduced in December 2005, and ASSIST staff visited Cardiff to observe a MARAC (Robinson, 2006a: 31). It is therefore not a coincidence that the MARAC was subsequently introduced in Glasgow.<sup>63</sup>

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<sup>62</sup> Indicators are: high risk score on the risk assessment; the IDAAs professional judgement; or escalation. Taken from [www.safelives.org.uk](http://www.safelives.org.uk) Accessed: 12/09/18.

<sup>63</sup> There was also a Scottish Government funded MARAC in North Lanarkshire in November 2005, but it adopted a different model and invited those in management posts, rather than the IDAAs and those supporting women and children.

The model exploits existing research on the benefits of a coordinated, multi-agency approach (Shepard and Pence, 1999; Rummery, 2013), and there is evidence that potential benefits of the MARAC include reducing incidence of repeat victimisation, focusing limited resources on those most at risk, assisting practitioners with a ‘paper-trail’ when a victim ceases to engage, and improving practitioner safety by identifying high risk offenders (Robinson and Rowlands, 2009). Limitations of the MARAC were cited as victims’ cooperation and resources (Robinson and Howarth, 2012; Howarth and Robinson, 2016). Robinson and Tregidga (2007:1132-34) identified the key components of multi-agency working as increased and ongoing communication, conducting a risk assessment, providing advocacy to victims, translating policy into action, and holding perpetrators to account.

Adopting a common language of risk amongst agencies, the MARAC allows for the prioritisation of ‘high risk’ victims (Robinson, 2006b). Responsibility for policing of domestic abuse shifted from front-line officers to family protection and specialist officers, before returning to first-response policing largely due to the volume of cases.<sup>64</sup> In 2013, the eight regional police forces in Scotland amalgamated into the second largest police force in the UK<sup>65</sup> as the Police Service of Scotland.<sup>66</sup> Despite difficulties, it has allowed a national overview of domestic abuse. Following slow, but steady development of the model, there are now 28 regular MARACs across Scotland. SafeLives predict that 34 MARACs are needed in Scotland to adequately support high risk victims.<sup>67</sup> Developing best practice, they have published UK guidelines on the key indicators of a successful MARAC<sup>68</sup> and, in Scotland, a MARAC development officer was appointed in 2016, initially for six months, to ensure that there was national coverage. She will remain in post until there is a regular MARAC in every local authority, mirroring the MATAC. The MATAC conference provides a conduit for

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<sup>64</sup> 25% of police time in Scotland relates to dealing with reports of domestic abuse (McPherson, 2014); see also #Everynineminutes at <http://www.scotland.police.uk/whats-happening/news/2017/december/tis-the-season-domestic-abusers-were-coming-for-you> Accessed 05/04/18.

<sup>65</sup> After the Metropolitan Police (see <http://www.scotland.police.uk/about-us/> Accessed: 14/08/18) although it covers the largest geographical area of any police force in the UK.

<sup>66</sup> Police and Fire (Reform) Scotland Act 2012, introduced a single force.

<sup>67</sup> SafeLives (2017) *Whole Lives: Improving the Response to Domestic Abuse in Scotland*, is available at: <http://safelives.org.uk/sites/default/files/resources/Whole%20Lives%20Improving%20the%20response%20to%20domestic%20abuse%20in%20Scotland.pdf> Accessed: 13/09/18.

<sup>68</sup> Available from the SafeLives website at: <http://www.safelives.org.uk/sites/default/files/resources/The%20principles%20of%20an%20effective%20MARAC%20FINAL.pdf> Accessed: 09/09/18.

referral to the Domestic Abuse Task Force (DATF), a national unit pro-active policing of repeat offenders by Police Scotland and the application of the Disclosure Scheme for Domestic Abuse in Scotland (DSDAS).

As a result, pockets of best practice and effective initiatives have been stream-lined into a coherent three-tiered model. Police officers have been offered the opportunity to complete an e-learning package<sup>69</sup> on domestic abuse and the DAQ risk assessment checklist tool; local domestic abuse units support high risk victims of domestic abuse and participate in the MARAC; and the national DATF identifies serial perpetrators and adopts a controversial, but effective, pro-active model of policing. Each level is infiltrated by a culture of risk management. Whilst Robinson (2006b) was right to highlight the benefits of similar pockets of innovation in Cardiff, risk management as a philosophy for tackling domestic abuse has developed in an *ad hoc* and reactive way. Academic scrutiny has suggested that the key to supporting victims and reducing recidivism is a multi-agency response (Robinson, 2006b), rather than the risk assessment tool, whose ability may be limited (Robinson and Rowlands, 2009). Ariza et al. (2016: 347) observe:

“It may be that expectations for frontline officers to complete a risk assessment form in the same manner as would a victim advocate are simply unrealistic, and that a more ‘user-friendly’ tool is required at the frontline.”

This supports calls for “a more nuanced debate about the underlying rationale and associated goals of risk assessment in the policing context.” In Scotland, there has been no government analysis of the practice of prioritising and managing cases based on a risk model, and the evolution of risk management to tackle domestic abuse has been relatively unchecked.

### 3.8 Domestic Abuse Task Force (DATF) and the Disclosure Scheme

The DATF was introduced by Sir Stephen House as Chief Constable of Strathclyde Police in 2009 and has a national overview to investigate those suspected of serial domestic abuse with different partners over a period of time. As a Chief Constable who prioritised domestic

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<sup>69</sup> This has been recognised as ineffective and SafeLives have been awarded the contract to provide face to face training to police officers, prior to the 2018 Act coming into force.

abuse, his subsequent appointment as the Chief Constable of the Police Service of Scotland in 2013 was described as “pivotal” (Lombard and Whiting, 2018: 34), as he declared domestic abuse one of the top three priorities for the new single force. As a result, the DATF became national. This model was facilitated by the prior introduction of a vulnerable persons database (‘VPD’) in Strathclyde in 2002, a delayed response to the 1997 inspection of policing of domestic abuse (HMICS, 1997) following media reports of a number of high profile deaths, including the death of Marilyn McKenna (BBC Frontline Scotland, 2000; Morris et al. 2002) which identified gaps in police recording of domestic abuse.

Marilyn McKenna’s ex-partner, Stuart Drury<sup>70</sup> is a name rote-learned by law students as a case study on the law on provocation in murder trials. His relationship with his ex-partner, whom he was convicted of murdering, is less known. Both the trial and re-trial, not dissimilarly to the infamous trials of OJ Simpson and Oscar Pistorius (Ontiveros, 1995; Kadri, 2005; Gadd, 2017) did not focus predominantly on the domestic abuse or stalking experienced by the deceased. Instead, the decision by a bench of five judges has influenced Scots Law on provocation (Chalmers & Leverick, 2012).

Yet, Marilyn McKenna’s death led to an overhaul of police recording and response to domestic abuse cases. The media reporting following her death included a BBC documentary in which Marilyn’s sister and other family members were interviewed. The BBC reported on a chilling telephone conversation between Marilyn and her sister where she predicted her own death. Following their separation, Drury stalked Marilyn McKenna for two years. He was convicted five times of breach of the peace in that time and there was also a civil non-harassment order in place against him. Nevertheless, he could follow her home and murder her.

The VPD is incident focused and allows police to track reports of vulnerability, and in particular, records concerns relating to: children; hate crime; youth offending; vulnerable adults and domestic abuse, even if ‘no crime’ is reported. This has created a centralised database of reports of domestic abuse across different police areas and allows officers to

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<sup>70</sup>Drury v HMA 2001 SCCR 583.

identify repeat victimisation, even in cases which do not result in a criminal prosecution. The VPD was recently scrutinised by the Information Commissioner in relation to data retention and upheld a complaint about the lack of review procedure for maintaining personal data (Adams and Murray, 2017). Nevertheless, such a measure reduces the ability of perpetrators to evade detection by repeatedly moving and offers significant protection to victims. The timeline in appendix one shows the influences of formal inspection reports, media reporting and police initiatives which merge to create the VPD and a stepping stone to proactively tackling persistent offenders.

Beyond the internal review of police procedures relating to vulnerable individuals and a clarification of the law on provocation, Marilyn McKenna's death also led to Jim Wallace, then Minister for Justice announcing that there should be a review of the law in relation to stalking (Morris et al, 2002). Following consultation, the review found that there was not support for further legislation but that there were significant gaps in practice, including officer recognition of stalking and evidential proof of breach of the peace as a course of conduct. It would be a further eight years and a sustained campaign by Marilyn McKenna's sister, galvanised by Ann Moulds' 'Campaign Action Scotland Against Stalking,'<sup>71</sup> launched in 2009, before a specific offence of stalking became law.<sup>72</sup> Nevertheless, it is recognised by criminal justice practitioners and third-sector workers<sup>73</sup> that the campaign by Marilyn McKenna's family and identified flaws in the police investigation and failure to identify earlier stalking prior to her murder, contributed to the creation of the VPD, which has substantially improved the scope of police detection of domestic abuse in Scotland.

The Disclosure Scheme for Domestic Abuse Scotland ('DSDAS') also contributes to a national overview of offending and the Task Force model is predicated on meeting the challenge of corroboration and a police model to combat serial offending (Robinson, 2017a). The Moorov doctrine in Scots law allows charges of a similar character and circumstance to be mutually corroborative (Scottish Law Commission, 2010: 2). Thus, where there is more

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<sup>71</sup> Registered as a charity. Information is available at <http://www.actionagainststalking.org/about-stalking-charity.html> Accessed 25/08/18.

<sup>72</sup> Criminal Justice and Licensing (Scotland) Act 2010, s39.

<sup>73</sup> Based on anecdotal professional experience and conversations with Inspector Deborah Barton and Mhairi McGowan, CEO ASSIST.

than one victim of domestic abuse, describing similar abuse by the same perpetrator, separate victim's evidence may corroborate the other. Evidence for such cases tends to arise from information on the VPD, where there is a marker of vulnerability, which allows police to track domestic incidents in different police areas and to identify repeat victimisation, even in cases which do not result in a criminal prosecution.

Similar to Clare's law in England and Wales (Fitz-Gibbon and Walklate, 2017), the DSDAS has encouraged victims to report ex-partners, even if they did not make a criminal complaint to the police during the abusive relationship. Thus, many of their investigations are historic, which creates a barrier in obtaining best evidence. However, it is indicative of a wider understanding of domestic abuse and evidence of pro-active policing. Further, combining multiple complainers and numerous charges has resulted in an increased number of cases being prosecuted before a jury or in the High Court and provides an opportunity for the court to sentence for cumulative offending. Consequently, the work of the Task Force has been high profile in Scotland, largely due to high tariff sentences, including imprisonment and orders for life-long restriction of liberty (Brown, 2016). The task force model was adopted from strategies used to tackle serial criminality.

### 3.9 Supporting Domestic Abuse Victims: Policy and Legislative Framework

#### (i) *Equally Safe*

The publication of *Equally Safe* (2014 and 2016c) represents a commitment from government to recognise domestic abuse within a broader umbrella of violence against women and girls and to categorise it as gendered offending. This approach was nudged forward by *Safer Lives, Changed Lives* in 2009. In 2010, a short policy think piece entitled: *What does gender have to do with violence against women?* was published to complement the 2009 strategy. Its goal was to spell out the link between gender equality and violence against women and paved the way for the approach in *Equally Safe*.

*Equally Safe* (2014; 2016c) thus builds on previous strategies, adopting a gendered approach and maintaining the importance of the '4Ps' (Prevention, Protection, Provision and

Participation). However, the language has also been adapted to echo wider policy shifts in government towards violence against women and girls as an equalities and human rights issue. Reflecting wider economic uncertainty and the need for efficiency, there is a stronger emphasis on management, accountability and risk and a focus on criminal justice outcomes, rather than process. The strategy is supported by a delivery plan to ensure practical realisation of the aims and objectives. It sets out 118 actions under four ‘workstreams’:

“ensuring that Scottish society embraces equality and mutual respect, and rejects violence; that women and girls thrive as equal citizens; that interventions are early; and that men desist from violence and perpetrators receive a robust and effective response.”

Implementation of the delivery plan is overseen by the Violence Against Women Joint Strategic Board. Established in 2015, its membership includes representation from Rape Crisis, Scottish Women’s Aid, Zero Tolerance and ASSIST. The aspirations of the delivery plan seem less bold within the context of an overview of 40 years of campaigning and 20 years of strategy building-blocks. *Equally Safe* offers a promising capstone policy within which to consider more meaningful ways of recognising domestic abuse as gendered offending.

## (ii) *Legal Recognition of Victims*

In 2015 in fulfillment of its legislative obligation under the 2014 Act, the Scottish Government published a Victims’ Code for Scotland<sup>74</sup> (2015c) and a Standards of Service for Victims and Witnesses (2015d).<sup>75</sup> Best described as a Bill of Rights for Victims, it is a positive step in setting out to victims what they can expect from the court process and their entitlement to information provision and participation. The accompanying Standards of Service (2015d) provide a helpful flowchart of the criminal justice process, entitled a “victim map.” However, it does not provide timescales or show the lengthy periods where they may be required to wait. It does not reflect when, from the victim’s point of view, nothing

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<sup>74</sup> s3B.

<sup>75</sup> s2.



happens. It also suggests victims have a role in deciding whether or not a case will proceed at the outset, which is misleading.

Following the publication of these service-level guarantees, Lesley Thomson QC<sup>76</sup> was commissioned to conduct a review into victim care in the justice sector in Scotland (2017). The review does not refer to these publications in its stated aims, nor does it measure service provision against them. Instead it is a broad-brush look at victims' care in the criminal justice process (not the justice sector more widely); there is no assessment of criminal-civil links, or victims' reality of accessing 'justice.' It provides a useful critique of VIA and suggests, like the earlier thematic reports,<sup>77</sup> that VIA could be better used. It reports an internal review of VIA, but it is not clear if that will be published. The purpose and audience of the review are unclear and an opportunity was lost to link better with Lord Carloway's evidence and procedure review (2015).

The 2014 Act is the first legal recognition of 'victims' (rather than complainers or witnesses) in Scotland. It purports to engage greater participator rights to victims, including the automatic grant of special measures;<sup>78</sup> the right to determine the gender of a medical practitioner in cases of serious sexual assault;<sup>79</sup> and the right to an interpreter.<sup>80</sup> It creates categories of 'deemed vulnerable' witnesses who are automatically entitled to special measures within the courtroom. This legislation has seen an increase in the use of special measures (Carloway, 2015), but chapter six highlights some ongoing difficulties in their use. Nevertheless, the introduction of a legal category of 'deemed vulnerable' victims creates a practical mechanism for future reform proposals, as vulnerability is clearly defined and understood.<sup>81</sup> The promise of the legislative intent is potentially compromised, in part, by some of the provision of the 2018 Act.

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<sup>76</sup> Former Solicitor General for Scotland.

<sup>77</sup> See para 3.1.3 above on the findings of the joint thematic reports by the Inspectorate of Prosecution and HM Inspectorate of Constabulary for Scotland (2010; 2011).

<sup>78</sup> 2014 Act, s12.

<sup>79</sup> 2014 Act, s9.

<sup>80</sup> 2014 Act, s3F.

<sup>81</sup> 2014 Act, s10 provides amendment to Criminal Procedure (Scotland) Act 1995, s271. There are numerous categories of cases which result in a victim being 'deemed vulnerable' (including victims of domestic abuse,

Additionally, the Act introduces two shifts towards greater consultee rights: first, the right to make representations post-conviction in relation to release from prison on license<sup>82</sup> and in relation to conditions attaching to the terms of an temporary release;<sup>83</sup> and second, the review of a decision not to prosecute<sup>84</sup> (the ‘Victims’ Right to Review’). In the US these rights have been described as ‘third wave’ rights, after standing and remedy (Beloof, 2005). It is clear that such legislative provisions impose further responsibility on victims, where safety will be a grave consideration when responding to a court or Parole Board in relation to release. The utility of a right to review in cases of domestic abuse is less apparent. The presumption in favour of prosecution means that, where there is sufficient admissible evidence, the case is likely to be prosecuted. It would only be in rare circumstances that a case would be marked no proceedings, applying the public interest test (Crown Office, 2018). As the right to review relates only to decisions *not* to prosecute, where the decision could be changed (if there is an insufficiency in law, the decision cannot be altered), it is difficult to envisage the utility of the right to review for domestic abuse victims. It is conceivable that a decision not to prosecute is taken where the corroborative witness is a very young child and that review shows that both mother and child are prepared, able and willing to give evidence, leading to a reversal of the ‘no proceedings’ decision and a prosecution. However, it is arguably more likely that fear, safety concerns and ongoing barriers to justice will prevent it being fully exploited, serving to further illustrate the gap between legislative intent and reality for victims of domestic abuse accessing an over-burdened justice system (Bettinson, 2016; Logan, 2018). A picture emerges of a louder and more forceful rights-based rhetoric, which bears little resemblance to victims’ daily experiences.

### 3.10 The Current Landscape

Offences amounting to domestic abuse are prosecuted under a wide range of common law and statutory offences. Offences are ‘flagged’ as being domestic abuse by the inclusion of a

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s271 (1)(c)(iv)) but there remains a provision that vulnerability can be established if there is evidence of, “fear or distress in connection with giving evidence at the hearing” (s271(1) (b)(ii)).

<sup>82</sup> 2014 Act, s28.

<sup>83</sup> 2014 Act, s29.

<sup>84</sup> 2014 Act, s4.

domestic abuse aggravator. This practice has evolved<sup>85</sup> to allow police and prosecutors to count the number of domestic abuse cases to grasp the scale of the problem, and to respond to Freedom of Information<sup>86</sup> requests for statistical information. If convicted, the police marker appears on an accused's schedule of previous convictions. This practice allows police and prosecutors, not only to count cases, but also to identify repeat, analogous offending. From the accused's point of view, however, it is a dubious practice, untested by defence solicitors. This has recently been partly remedied by the introduction of a statutory aggravator,<sup>87</sup> where the Crown requires to prove, by a single source,<sup>88</sup> the aggravation and thereafter the aggravation must be taken into account during sentencing.<sup>89</sup>

While any crime known to the law of Scotland could be aggravated as being 'domestic abuse,' in practice the majority of charges relate to physical assaults, shouting and swearing.<sup>90</sup> A significant proportion of stalking offences<sup>91</sup> are aggravated by being domestic abuse, and it provides a limited opportunity to criminally recognise some behaviour as a course of conduct. Appeal court decisions requiring a public element or 'discoverability' to breach of the peace<sup>92</sup> have inevitably led to a reduction in its use for domestic abuse and contraventions of the Criminal Law (Consolidation) (Scotland) Act 2010, section 38 ('a section 38') are more commonly charged (Ferguson and McDiarmid, 2014: 415 et seq).<sup>93</sup> This makes it an offence to behave in a threatening or abusive manner, likely to place an individual in a state of fear and alarm. Such an offence benefits from being an objective test and, accurately labelled, has some scope to reflect a course of conduct.

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<sup>85</sup> The practice started in 1999 in legacy Strathclyde.

<sup>86</sup> Freedom of Information (Scotland) Act 2002, s1.

<sup>87</sup> Abusive Behaviour and Sexual Harm (Scotland) Act 2016, s1 creates an aggravation where it is proved (by a single source, s1(4)) that the offence was committed against a partner or ex-partner.

<sup>88</sup> s1(4).

<sup>89</sup> Section 1(5)(c)&(d).

<sup>90</sup> Statistics for 2017/18 are available from the COPFS website at: <http://www.copfs.gov.uk/publications/statistics> Accessed: 13/09/18.

<sup>91</sup> Criminal Justice and Licensing (Scotland) Act 2010, s39.

<sup>92</sup> *Smith v Donnelly* 2002 JC 65.

<sup>93</sup> COPFS statistics count contraventions of section 38 offences under the category of "Breach of the Peace etc" and separate statistics are unavailable.

The criminal law has wide scope to reflect much reported domestic abuse – physical assaults, theft of money and bank cards, abduction, stalking, rape and sexual assault, shouting, swearing, threatening behaviour, strangulation, vandalism and breaches of court orders preventing contact. Given this breadth and flexibility, it is unsurprising that some consultees to the 2018 Act felt that the current framework was adequate,<sup>94</sup> but there remain limitations to reflecting coercive control within substantive criminal law in accordance with victims’ experiences.

### 3.10.1 Looking Ahead: Institutional Advocacy, New Law and the Ongoing Campaign

ASSIST’s institutional advocacy role has received little recognition, despite its national reach. Through their representation as a stake-holder on boards, their close working relationship with Police Scotland, Scottish Government, COPFS and the wide circulation of their weekly Bulletin,<sup>95</sup> ASSIST can be seen as a bridge between the voluntary and public sectors in this field. Their close alignment to the formal structures through funding, co-location and governance has provided the independent charitable sector in this area the freedom to campaign with greater access, knowledge and roots into the establishment. This bridging role has been strengthened by the appointment in 2013 of a National Procurator Fiscal for Domestic Abuse (Peterkin, 2013); not only a statement of commitment from the prosecution, but also a valuable, practical role in harnessing the multi-agency response.

There has been a concerted campaign by feminist activists, seeking to persuade the UK Government to ratify the Istanbul Convention,<sup>96</sup> which is a convention on preventing and combatting violence against women and, specifically, domestic violence. For example, Scottish Women’s Aid’s has supported “we have a chance to change her story”

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<sup>94</sup> Law Society of Scotland response to the SG Consultation on a specific offence of domestic abuse, March 2016. Available at: [file:///C:/Users/Emma/AppData/Local/Packages/Microsoft.MicrosoftEdge\\_8wekyb3d8bbwe/TempState/Downloads/The%20Law%20Society%20of%20Scotland%20-%20Criminal%20offence%20of%20domestic%20abuse%20March%202016.pdf](file:///C:/Users/Emma/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/The%20Law%20Society%20of%20Scotland%20-%20Criminal%20offence%20of%20domestic%20abuse%20March%202016.pdf) Accessed 23/02/18.

<sup>95</sup> Disseminated weekly to 390 recipients, many of whom are organisations, so readership estimated to be much higher.

<sup>96</sup> <https://www.coe.int/en/web/istanbul-convention/home?desktop=false> Accessed: 20/04/18.

([www.scottishwomensaid.org](http://www.scottishwomensaid.org)). Whilst the UK became a signatory in 2012, it has still to ratify the convention.<sup>97</sup>

SWA's long-term hope is that society will evolve so that domestic abuse no longer exists and, as an organisation, it is no longer required (Cuthbert and Irving, 2001: 66). Meantime, as discussed above, it has campaigned to gain wider recognition of the scope and prevalence of domestic abuse; its starting point was to challenge societal denial and establish public acceptance that domestic abuse exists (Cuthbert and Irving, 2001: 60). This underscores the symbolic importance of legislation which creates a specific offence of domestic abuse.

It is likely that the infiltration of language around coercive control and intimate terrorism, specifically the recognition of a wider spectrum of domestic abuse, was influenced by a combination of factors which are drawn out on the timeline at appendix one. Burman and Brooks-Hay (2018: 72) suggest that the high profile prosecution of SNP MSP Bill Walker contributed to the case for a specific offence, with two further catalysts in the Government consultation on this topic: a visit to Scotland by Stark in October 2013 and a key note address by then Solicitor General Lesley Thomson QC. Johnson also visited Scotland in February 2014. Interestingly, he provided training input to CADDAs,<sup>98</sup> prior to addressing audiences in West Lothian and Glasgow, including prosecutors and police.

The announcement by the Solicitor General in early 2014 that there should be a specific offence of domestic abuse in Scotland was the key event. However, she made the announcement within the context of several contributing factors: the appointment of a Procurator Fiscal for domestic abuse; COPFS' first external conference on domestic abuse; and the safe knowledge that Michael Mathieson, then Justice Secretary, was committed and supportive. Following the announcement, there was government scoping of the efficacy of such a move and it was clear that the prosecution service would support it. The sustained and eloquent campaign by feminist women's support organisations, led by SWA, planted the seed

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<sup>97</sup> This may be influenced by the Domestic Abuse Bill in England & Wales, which would meet some of the convention requirements.

<sup>98</sup> CADDAs hold the training contract for domestic abuse training of key professionals in Scotland, including: ASSIST advocacy; IDAA accreditation; Police Scotland and COPFS.

for the legislation and presented the case for a specific offence. Their success, it is suggested, can be attributed to timing. The Solicitor General's announcement was made at the (only) COPFS conference on domestic abuse, more than a decade after the introduction of a specialist approach to prosecution and a year after the appointment of Scotland's first prosecutor for domestic abuse. COPFS' relatively slow public engagement with the third-sector made the announcement by the Solicitor General, attributing a pro-active approach by the Crown, an astute decision.

The 2018 Act is also important both in symbolic and practical terms. During the time of writing, it has been passed into law and will come into force in the 2018/19 Parliamentary session. Thus, while it does not represent the law as experienced by the women interviewed as part of this thesis, it will shape Scotland's future response, and any recommendations to address barriers for women need to take cognisance of the legislative framework. The exercise of drafting the Bill also represented a welcome shift in multi-agency working in which the idealism of the voluntary, activist sector came together with the legal and policy perspectives of government, police and prosecution to produce a unique piece of legislation, which has the potential to hear in court, for the first time, the lived experiences of women and children. If the narrative thus far has been to contextualise the findings in chapters five, six and seven, the analysis which follows ought to inform the relevance of conclusions drawn in chapter eight.

### 3.10.2 The 2018 Act

Cammiss (2006: 712) observed that a "course of conduct is more serious than the sum of the allegations." This is reflected in the legislative approach of the Act, which seeks to more accurately capture lived experiences of abuse. Support for the legislative intent glosses over current evidential challenges of proving domestic abuse, which are compounded rather than mitigated by the Act.

It has been lauded as “fundamentally innovative and world leading,”<sup>99</sup> a “gold standard,”<sup>100</sup> “ground-breaking,”<sup>101</sup> “bold and aspirational” (Burman and Brooks-Hay, 2018: 78) and a “watershed moment”<sup>102</sup> which “could change Scotland forever.”<sup>103</sup> Equally, it has been criticised as having: “given prosecutors *too much* autonomy and ignored their own speeches about importance of clarity, certainty and clear thresholds in our criminal law” (Tickell, 2018a). With an adjustment of “too much” to “greater”, I would endorse all of these reflections, although caution that the effects will not be immediately apparent. It is both radical and problematic, but broadly welcome.

The Act creates a specific offence, in section 1, of domestic abuse by engaging in a course of violent,<sup>104</sup> threatening or intimidating behaviour that is abusive towards a partner or ex-partner.<sup>105</sup> Section 4 creates an aggravation where behaviour is directed towards a child or involves a child in the commission of the offence.<sup>106</sup> Distinct from England and Wales,<sup>107</sup> it goes further than simply introducing an offence of coercive control. The accused will be prohibited from conducting his own defence and will not, therefore, be able to cross-examine the victim directly.<sup>108</sup> The Act will make it possible to prosecute physical *and/or* emotional abuse as one, continuing offence. Section 2 provides the relevant effects of behaviour which will be criminalised:

- (a) making B dependent on, or subordinate to, A,
- (b) isolating B from friends, relatives or other sources of support,

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<sup>99</sup> Dr. Marsha Scott, CEO Scottish Women’s Aid, in an interview for The Guardian, 1<sup>st</sup> February 2018, available at: <https://www.theguardian.com/society/2018/feb/01/scotland-set-to-pass-gold-standard-domestic-abuse-law> Accessed: 13/09/18.

<sup>100</sup> <https://www.theguardian.com/society/2018/feb/01/scotland-set-to-pass-gold-standard-domestic-abuse-law>, Accessed 18/02/18.

<sup>101</sup> Rona Mackay, MSP speaking in the stage 3 debate on the Bill in the Parliament: <https://www.theyworkforyou.com/sp/?id=2018-02-01.23.0>, accessed 18/02/18.

<sup>102</sup> Michelle Ballanyne, MSP speaking in the stage 3 debate on the Bill in the Parliament: <https://www.theyworkforyou.com/sp/?id=2018-02-01.23.0>, accessed 18/02/18.

<sup>103</sup> <http://www.bbc.co.uk/news/uk-scotland-42890990>, Accessed 18/02/18.

<sup>104</sup> Includes physical and sexual violence – s2(4)(a).

<sup>105</sup> s1(1)(a). s9 creates a presumption as to relationship.

<sup>106</sup> The impact of this section on the requirement of corroboration and the definition of domestic abuse is worthy of a separate examination.

<sup>107</sup> Serious Crime Act, 2015, s76(1) creates an offence of ‘repeatedly or continuously’ engaging in behaviour which is ‘coercive or controlling.’

<sup>108</sup> Schedule 1, Chapter 3(8)(2) inserts section into the Criminal Procedure (Scotland) Act 1995.

- (c) controlling, regulating or monitoring B's day-to-day activities,
- (d) depriving B of, or restricting B's, freedom of action,
- (e) frightening, humiliating, degrading or punishing B.<sup>109</sup>

It is envisaged that pre-existing crimes of physical and sexual violence will be included in draft charges where they are part of the experience of abuse. The novel aspect of the legislation is the introduction of behaviours which relate to psychological and emotional abuse and are understood as 'coercive control' (Stark, 2007). The rationale for recognising all abusive behaviours in one criminal charge is an understanding of gendered experiences of a continuum of abuse, rather than being incident-focused.

A positive aspect of the legislation is its commitment to evaluation within three years of the commencement of the Act.<sup>110</sup> The method of evaluation (Elias, 1986) and whether or not its measure of 'success' goes beyond the politically comfortable measure of "effectiveness" (Hester and Westmarland, 2005) will dictate the future utility of the evaluation report.

Nevertheless, this represents a shift in approach and a recognition that the effective and meaningful implementation of the legislation will depend on practitioners' ability to bring prepared cases before court within a reasonable time and that the experiences of the victims and their children are important. Simon (2007: 188) rightly asserts that: "The question of whether more criminalisation is actually reducing violence against women remains a prime one."

### 3.10.3 Evidence Review

Campaigners have argued that the abolition of corroboration would improve the conviction rate in prosecutions of domestic abuse and sexual violence (Barton, 2013; for a discussion see Chalmers, 2013). Lord Carloway, in considering possibilities for reform to aid children and vulnerable witnesses giving evidence, observed that the adversarial process was not designed with the expectation that children would give evidence (Carloway, 2015: 26). Similarly,

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<sup>109</sup> s2(3).

<sup>110</sup> s12A.



domestic abuse was not historically recognised as criminal conduct and the adversarial trial is not designed to probe the intricacies of intimate private relationships. Following cross-party support for policy change – and a requirement to meet the obligations of the EU Directive – there have been legislative changes to the evidence and procedure relating to vulnerable victims and witnesses. Moreover, there have also been some reforms to the substantive law, namely a review and codification of the law relating to sexual offences;<sup>111</sup> the introduction of a law of stalking;<sup>112</sup> the recognition of intimate image abuse;<sup>113</sup> and the 2018 Act.

The law of evidence remains under review. Further protections for children and vulnerable witnesses have been recommended, including examination of the ‘Barnehus’ and ‘Pigot’ models, partially adopted in England and Wales, and fully embraced in Australia (Carloway, 2015). Such models exclude children and vulnerable witnesses from the courtroom. The Barnehus is designed exclusively for children and provides a supportive environment in which to give evidence (Tuveng, 2013). Despite Norway being a continental model, inquisitorial rather than adversarial, the evidence review recommended its consideration (Carloway, 2015) for children and vulnerable witnesses, and the then Cabinet Secretary for Justice, having visited a similar model in Iceland in 2017, was impressed by the approach (Davidson, 2017). The Pigot model was created using a psychological approach to the obtaining of best evidence from vulnerable witnesses through the use of trusted intermediaries (Pigot and Friedman, 1998 referenced in Carloway, 2015; for an overview of the operation of the model in England and Wales, see Cooper and Mattison, 2017). Carloway’s profile-raising of these different modes of taking evidence, combined with the legal recognition of ‘deemed vulnerable’ victims, paved the way for future reform to ensure more of the trial process is examined. As domestic abuse victims are ‘deemed vulnerable’ by the current legislation, scoping these developments could have long-term impact on victims of domestic abuse. The Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill 2018,<sup>114</sup> which, if passed, will allow children and deemed vulnerable witnesses to provide pre-

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<sup>111</sup> Sexual Offences (Scotland) Act 2009.

<sup>112</sup> Criminal Justice and Licensing (Scotland) Act 2010, s39.

<sup>113</sup> Abusive Behaviour and Sexual Harm 2016 Act.

<sup>114</sup> [http://www.parliament.scot/Vulnerable%20Witnesses%20\(Criminal%20Evidence\)%20\(Scotland\)%20Bill/SPBill34S052018.pdf](http://www.parliament.scot/Vulnerable%20Witnesses%20(Criminal%20Evidence)%20(Scotland)%20Bill/SPBill34S052018.pdf) Accessed 15/06/18.

recorded evidence in some solemn cases is welcome, but will not help the majority of victims of domestic abuse, whose perpetrator appears on summary complaint.

The catalyst for the current re-examination of evidence and procedure was the decision of *Cadder v HMA*,<sup>115</sup> which applied the European decision of *Salduz*<sup>116</sup> to the Scottish domestic setting and opined that the Crown could not safely rely on an admission made by an accused person, where the accused person had not been provided an opportunity to consult a solicitor. Following the decision, the Scottish Government instructed an independent review, chaired by Lord Carloway (2011). In examining the requirements of Scots criminal law and procedure to meet a human rights based model, the review team went beyond the narrow issues in *Cadder* of access to legal advice in custody. The abolition of corroboration was recommended, which led to a Scottish Government consultation (Scottish Government, 2013) and a further independent review (Bonomy, 2015) on required post-corroboration safeguards. This report called for research on the conduct of juries (Bonomy, 2015: para. 12.24) and recommended the abolition of dock identification (Bonomy, 2015: para. 6).

#### 3.10.4 Privileging Narrative – Evidencing a Continuum

The Act introduces an objective test, which does not rely on the evidence of the victim that (s)he was in fact harmed or distressed by the abuse,<sup>117</sup> but applies a test of whether or not a reasonable person would consider the course of conduct likely to cause the complainer to suffer physical or psychological harm. Thus, it is the *likelihood* of harm, rather than actual harm, which must be established. This is distinct from England and Wales, where the focus remains on the victim to establish harm (Bettinson and Bishop, 2015: 195). This is an important safety consideration for women reporting abuse<sup>118</sup> and also a significant shift in Scotland towards some autonomy, as it provides an opportunity for them to report what has happened without being compelled to share personal details of the impact it has had. In this respect, the drafting of the Bill, distinct from a direct replication of Stark's coercive control, is key. Hanna (2009) has raised concern that adopting coercive control into law potentially

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<sup>115</sup> [2010] UKSC 43.

<sup>116</sup> [2008] ECHR 1542, 36391/02.

<sup>117</sup> s3.

<sup>118</sup> Dr Marsha Scott, CEO Scottish Women's Aid in evidence to the Justice Committee, 13 June 2017.

reinforces “conundrums about women’s agency” (2009: 1460) and “complicity in the abuse” (2009:1474). This risk has been mitigated by the objective test, but such a test does depend on a test of reasonableness, which I argue, in chapter six, is problematic within the current court culture.

It succeeds in both privileging women’s accounts<sup>119</sup> and preserving scope for ‘victimless’ prosecutions (Dempsey, 2009), i.e. cases prosecuted without hearing evidence from the victim, where there is a sufficiency of evidence without them. This is important because domestic assault under the common law can already be prosecuted without the evidence of the victim. Given the private nature of the vast majority of offending and the enduring requirement for corroboration in Scotland (Reid, 2013; Dyer, 2013; Cairns, 2013; Chalmers, 2013; 2014b), this is not a regular occurrence (Forbes, 2018: 407). It is difficult to envisage situations within the current framework where prosecutions would be successful without hearing direct testimony from the victim (Bishop, 2016b; Tolmie, 2017). Further, whilst there is no requirement to show ‘harm,’<sup>120</sup> it will be tricky to assess the severity of a particular offence and sentence appropriately, without some evidence of injury, harm or impact (Walby and Towers, 2018:13).

Currently, prosecution of continuing offences is broadly contained to fraudulent schemes, dangerous (and careless) driving and stalking. In all of these offences there continues to be an incident-focus within the overall charge. Bettinson (2016b: 175; Bettinson and Bishop, 2015:191) distinguishes between a course of conduct and a pattern of behaviour. Walby and Towers (2018:23) articulate difference between a course of conduct which is recognised as one event with many incidents (Stark, 2007) and each repetition as a separate crime. In Scots law, whilst an offence may be labelled as ‘on various occasions,’ it still relies on an inventory of discrete events within the overall picture of offending behaviour, and any subsequent trial

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<sup>119</sup> Alison Di Rollo, QC, Solicitor General for Scotland, speaking at the Scottish Women’s Aid Conference, Edinburgh, 1 December 2017.

<sup>120</sup> s3(1).

is likely to be date-focused and require corroboration of each ‘incident’.<sup>121</sup> This belies the legislative intent.

Despite challenges in implementation, any attempt to recognise an offence of domestic abuse is cause for ‘cautious optimism’ (Hanna, 2009: 1460). The new offence is grounded in Scottish Government policy, which seeks to redress violence against women and girls (*Equally Safe*, 2014; 2016c) and attempts to criminalise for the first time emotional and psychological abuse, within a course of conduct. Moreover, the ways in which agencies pulled together in its drafting invites hope for their future partnership working.

### 3.11 Summary and Looking Ahead

“The way in which child and vulnerable witnesses are treated in Scotland, although recently improved, still falls far short of the standards set in other jurisdictions.”

(Lord Carloway, 2015)

It seems that the Scottish Government is committed to eradicating violence against women and girls as evidenced by consistent policy, strategy and funding. Whilst progress in human trafficking, forced marriage and female genital mutilation (FGM) has been slower, the determination to deal with domestic abuse is palpable. This topic cut through party political boundaries in Holyrood and the multi-agency response strengthened the efforts of voluntary and statutory organisations. A concerted national campaign by SWA, an increasingly effective working relationship between police and prosecutors (Bettinson, 2016a) and the bridging role of advocacy services, such as ASSIST, have also contributed. Nevertheless, this policy progress is not reflected in the individual experiences narrated in the findings chapters which follow.

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<sup>121</sup> Robert Spinks v Procurator Fiscal, Kirkcaldy [2018] HCJAC 37: offence of stalking on various occasions over a two-week period and assault over a four-year period. On appeal, the high court held that the charge reflected a number of assaults and each one had to be corroborated.

Initially distinct, the multi-agency approach in Glasgow, harnessed around the specialist court, was introduced across Scotland. This was not as a result of the ‘success’ of the court, but largely due to the creation of a single police force creating a national overview of improved practice. The managerial approach to the single police force, within the context of austerity (Rose, 2013) contributed to the prominence of a risk-based model, which allows scope for prioritisation. As a result, the multi-agency ethos became conflated with a risk-model. The limitations of this approach and the need for further scrutiny of the risk model have been highlighted (Robinson et al., 2016) and are explored in chapter five.

The individual women who started the grassroots campaigns in the 1970s have become prominent figures with a ‘seat at the table,’ but other individuals with a commitment to improving victims’ experiences have also influenced the direction of the justice response: the female police constables working in family protection when the first police and prosecution Joint Protocol was signed are now the management team within the Task Force and have policed domestic abuse for the intervening fifteen years; Dame Angiolini led the pilot of VIA;<sup>122</sup> Sir Stephen House’s commitment to domestic abuse as a strategic priority for police at the outset of Police Scotland, when protocols, agreements and approaches were being forged; and a Procurator Fiscal for Domestic Abuse was appointed. The importance of their emotionally empathic response is often ignored, or diluted by volume and pressure of business. Chapter six focuses on the ways in which women continue to feel unheard within the court process, when time is not taken to engage with them.

This chapter illustrated the significant changes that have taken place in recognising and responding to domestic abuse in Scotland. A great deal has happened since devolution, but this was grounded in efforts since the 1970s and a committed grassroots campaign. Legislation and policies have shown consistent intent to deal with violence against women, specifically domestic abuse, and support vulnerable victims. In combination, these commitments have framed the criminal justice response. Public awareness and consciousness-raising about the issue of domestic abuse have become mainstream, and a coherent government approach to ending violence against women and girls continues to mature and develop. Nevertheless, policy-makers, together with academics, have focused on

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<sup>122</sup> Her contribution is referred to at: <https://www.law.ox.ac.uk/people/rt-hon-dame-elish-f-angiolini-dbe-qc-frse>  
Accessed: 22/04/18.

the police and court response, rather than the process before, during and after these official punctuation marks.

At the time of writing, the shape of Brexit is uncertain. The UK's previous lack of commitment to criminal procedure directives, through opt-out provisions, is likely to be challenged as a bargaining chip to maintain membership of EU organisations facilitating mutual legal recognition and assistance. Giannouloupoloulos (2016: 390) predicts that "Brexit will put the UK at a disadvantage on judicial and police cooperation in Europe." Whilst European jurisprudence may be likely to retain sway in Scottish courts, there are significant implications for the criminal justice process in general, and domestic abuse in particular, of leaving the EU, including our ability, "effectively to meet the challenges posed by transnational crime" (Wolffe, 2018). For example, without third country arrangements, there will be no mutual legal recognition of non-harassment orders and withdrawal from Europol<sup>123</sup> and Eurojust<sup>124</sup> would reduce our ability to trace perpetrators cross-border.

Implementation of the General Data Protection Regulation ('GDPR')<sup>125</sup> has affected every agency – and individual – holding others' personal data. Teething problems in compliance are unsurprising, but these are easier to address in statutory and commercial organisations than in third-sector charities. ASSIST, for example, has reported difficulties in providing its daily court report, due to changes in information from the police.<sup>126</sup> It is too soon to tell if this will cause lasting damage. The duty of agencies to remove records of personal data at an individual's request presents an opportunity for perpetrators to coerce victims into seeking removal of their data from the VPD. Considering the proximity in time between the finding of the Information Commissioner in relation to Police Scotland's retention of data on the VPD and the introduction of GDPR, this is a real concern.

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<sup>123</sup> EU agency for law enforcement cooperation and facilitating cross-border policing. See <https://www.europol.europa.eu/about-europol> Accessed: 08/09/18.

<sup>124</sup> EU agency for judicial cooperation in criminal matters and facilitating cross-border prosecution. See <http://www.eurojust.europa.eu/Pages/home.aspx> Accessed: 08/09/18.

<sup>125</sup> EU Directive introduced into domestic law by the Data Protection Act 2018.

<sup>126</sup> ASSIST Bulletin, Year 14, Week 37, 23rd June – 29th June 2018 reported a 62% reduction in police referrals following GDPR. Further challenges highlighted in: Year 14, Week 41, 21st – 27th July 2018; and Year 14, Week 42, 28th July – 3rd Aug 2018.

Scoping for a national advocacy service points to government commitment for greater advocacy provision across Scotland. However, without a roll-out of specialist courts, advocacy impact is reduced. Scotland's unique approach has been attributed to the progress, thus far, of the violence against women campaign. The close relationship between local authority networks and central government has been influential. Work in this field is ongoing, much of which is positive. Social media campaigns such as “#MeToo” and “Time's Up” place prominence on the agenda. The 2018 Act introduces novel legislation in Scotland and the 2018 Bill promises greater protection to deemed vulnerable victims and witnesses. However, general policy progress is not always reflected in individual experiences, as explored in the findings chapters.

## CHAPTER 4: METHODOLOGY

### 4.0 Preamble

A mixed-method approach has been developed which marries the sociological grounded (Strauss and Corbin, 1996; Glasser and Strauss, 1999) feminist approach of directly interviewing those affected with a socio-legal analysis of government, legislative and societal responses to assess whether or not legislation and policy aims have been met and examine practical ways in which victims' experiences of the criminal justice process may be improved (Hanmer and Griffiths, 2000: 26). My approach triangulates:

- a grounded, feminist, qualitative approach;
- a socio-legal narrative of government, policy and social responses; and
- practical, auto-ethnographic practitioner experience.

The aim of the thesis is to explore domestic abuse victims' experiences of the criminal justice process and to explore the relationship between the victims' rights campaign and the statutory and policy responses. To assess whether new laws and policies help victims going to court and improve their safety, a methodology has been developed which takes direct testimony from victims and those who support them, situates their experiences within the policy timeline and analyses the result relying on practitioner experience.

The socio-legal narrative was explored in chapter two. In this chapter, I set out my ethical approach and my rationale for choosing qualitative interviews. My methodological narrative includes sourcing participants, my relationship with gatekeepers and participants and the ways in which some identities were blurred, including my own interviewer effect.

Thereafter, I reflect on my mode of analysis and how these strands are brought together in the ensuing chapters. Firstly, I reflect on my role as a prosecutor, how it has impacted on this research, and how it provides the link between the feminist and socio-legal approaches.

### 4.1 Introduction: Reflecting on my Role as a Professional and a Researcher

In chapter two I argued that a holistic approach was needed, particularly given that there has been little recent research in Scotland on the court response to domestic abuse and victims'



experiences of accessing justice. This gap was further explained in chapter three, where I mapped the approach taken in Scotland in terms of the localised politics invoked by devolution and the relationship between local councils and central government; the discrete legal system; and the policy decision to work within a gendered definition and understanding of domestic abuse (Scott, 2018).

Further, I outlined the shift in the role of the victim within the court process from peripheral (Shapland, 1986) to an increasingly important player with exercisable rights (Edwards, 2004: 967).<sup>127</sup> Improving service rights of victims may be viewed as ‘the right thing to do’ by a more responsive justice system, but in relation to the investigation and prosecution of domestic abuse, the role of the victim is pivotal. With such a private crime, there are unlikely to be witnesses beyond the victim and her children, and the case is unlikely to prove if they do not come to court and speak up. It is important to recognise why their cooperation is so crucial and what such cooperation means to them. Interviewing women about their experiences of domestic abuse means that the research subjects are potentially vulnerable and that the subject is sensitive (Farrimond, 2013: 163).

As the first full-time prosecutor within the Domestic Abuse Pilot Court in Glasgow in 2004, I was introduced to the investigation and prosecution of domestic abuse early in my career when I was a qualified prosecutor, but knew nothing about the dynamics of domestic abuse. My strategy was to deal with one case at a time and treat each woman coming to court as an individual. Recognising my own shortcomings and learning from the victims worked well. It did, however, make me sensitive to the public/private dichotomy in these cases, and the most difficult decision is always where the public interest lies in such a victim-led approach; a dilemma I explored in my Masters dissertation (Forbes, 2005) and which remains largely unresolved (Brindley, 2018).

My professional expertise in this field brings the benefits of access, specialist interview training (Ellsberg et al., 2001: 6) and a deep understanding of organisational structures and processes. It also means that I bring bias, or at least ‘researcher-effect,’ to the research

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<sup>127</sup> In Scotland, this has been given substance by the 2014 Act.

(Gilbert, 1993: 144: not all researcher ‘effect’ is biased). This has been acknowledged throughout the methodology, and I have reflected on overlaps with my professional role and potential conflicts of interest. It also results in a degree of autoethnography, as I am an ‘insider’ within the criminal justice system (Fitz-Gibbon, 2014: 252). The research topic, the research participants, my place as a researcher, and my professional role are so intricately woven, it can be difficult to unpick them. Taylor (2011), whose research boldly explored the social scene of which she was a part – her friends the research subjects – defines autoethnography as:

“where the researcher has been and remains a key social actor within the field and thus becomes engaged in a process of self-interpretation to some degree; and where the researcher is privy to undocumented historical knowledge of the people and cultural phenomenon being studied” (2011: 9).

This is a useful definition of auto-ethnography to describe my ‘insider’ role within the courtroom. The clear distinction between Taylor’s research and the current study is that I do not share women’s lived experiences of abuse. My ‘insider’ status is purely professional, relating to my experiences as a prosecutor. However, it goes beyond ethnographic or observational experience of court practice, as I was, and retain my status as “a key social actor within the field” (Taylor, 2011: 9). I remain aware of my part to play in the problems identified, my specific perspective on issues and what Taylor refers to as “undocumented knowledge” of parts of the criminal justice response and practitioner practices. Thus, I have adopted a degree of auto-ethnography to the extent that I have reflected upon my role as a prosecutor and have relied upon insider professional experience and knowledge of practice unreported in the academic literature, but would distinguish this partial approach from a primarily auto-ethnographic study, such as Taylor’s work.

With such a researcher-biography so meshed with the research question, a greater degree of reflexivity is required (Brooks, 2014b: 92), knowledge sources must be acknowledged, and the basis of conclusions tested. For example, where interviewees referenced the part played by the prosecutor or got the law wrong, I tried to reflect on it in coding and analysing the data. Whilst I am part of the justice response to domestic abuse, this is distinct from being part of the group being researched, and I have adopted an ethical approach to ensure that no assumptions are made about their vulnerability and to avoid any “oppressive theoretical paradigm” in relation to their social position (Stone and Priestley, 1996: 699). Whilst I relied

on my professional role to gain access and trust, once I started interviewing, it was important to compartmentalise so that I did not respond as a prosecutor but as a researcher. I found this frustrating when accounts were muddled and a more forensic style of questioning would have clarified the narrative, but I consciously did not interrupt flow and have reflected on the impact of this in my findings.

As a lawyer more than a social scientist, I saw the research ‘field’ as a new environment. I relied heavily on the work of feminist sociologists to craft a sensitive methodological approach, which allowed me to engage with a vulnerable group whilst ‘doing no harm’, but also allowed a socio-legal analysis of the data.

## 4.2 Ethical Qualitative Interviews within a Feminist Framework

I conducted 34 one-to-one interviews with women who had experienced domestic abuse or provided support to those who had. In many instances women’s narratives included both. I have delineated between ‘victims’ and ‘support workers,’ but recognise the blurred identities (discussion below). I interviewed 19 support and advocacy workers women from Women’s Aid, ASSIST and a community support project. I interviewed 15 victims and received referrals for a further seven.

### 4.2.1. Qualitative Interviews – the rationale

There is no unified ‘feminist’ methodology (Skinner et al., 2012) because of the heterogeneity of feminist theories (Gelsthorpe, 2002). Skinner et al. (2012) identify six characteristics of a feminist methodological approach, which provide a good starting point: first, it should be concerned with gender inequality; second, it rejects the “standard academic distinction between the researcher and the ‘researched’”; third, it ought to privilege women’s voices; fourth, it asserts a political dynamic; fifth, it will be reflexive; and, finally, it recognises the emotional impact of research on the researcher and the researched. Each of these resonate with the approach taken in the current research. In relation to the fourth criterion of asserting a political dynamic, Skinner et al. (2012: 15) suggest that it may mean

an activist approach, but can encompass critique of particular policies. In situating the interview data within a policy timeline, I have adopted a feminist methodology which aims to highlight gaps and challenge the efficacy of policy approach, but do not describe it as a work of political activism.

Many feminist researchers advocate a qualitative approach (Oakley, 1981), but it is generally accepted that a feminist methodology need not be constrained by exclusively qualitative methods (Hanmer and Griffiths, 2000: 38). Nevertheless, semi-structured interviews have the advantage of allowing for, “the telling of the story by an interviewee without interruption” (Skinner, 2012: 49). In contrast to the prescribed nature of questioning within the criminal justice process, this approach allows women to filter and prioritise their message and is a means of privileging their voice.

This research is derived from a will to seek empirical data from in-depth explorations of individual experiences (Hoyle and Sanders, 2000), whilst recognising such experiences are subjective and will provide perspectives, but not a scientific basis upon which generalisations can be made about all victims (Shapland, 1985; Hope, 2011; Johnson, 2008). A positivist approach which prioritises independence and objectivity at the expense of reflexivity and meaningful engagement is also rejected (Case and Haines, 2014: 58). Instead, the subjective interviews are framed within the law, anchored by a gender focus.

Such a private, potentially sensitive topic is not appropriately explored within focus groups (Walklate, 2011; Lee, 1993). Further, there are limitations to the depth of data secured from survey responses, and interviews are widely regarded as a way of contextualising valuable survey data (MacQueen, 2016; Walby and Towers, 2017). Specific to domestic abuse research, there is a likelihood of higher response rates to questionnaires from those who have experienced certain typologies of domestic abuse, *not* predominantly coercive control (Johnson, 2008). Coercive control is arguably the most damaging, pervasive and challenging form of domestic abuse, demanding a gendered response, which is why it is the focus of this research. Johnson (2008) suggests that disclosures of this type of abuse are unlikely from general survey data and that thirty years’ of research on intimate partner violence missed

opportunities for analysis by counting everything together (2008: 20). Moreover, a quantitative analysis would not capture data about victims' experiences of the unexamined gaps in the process. Thus, interviews are the most appropriate way to obtain detailed narratives in a sensitive, confidential and engaging manner. The research aims to probe experiences of the criminal justice process: it does not develop knowledge of the scale and nature of domestic abuse, but provides an insight into how it is experienced (Johnson, 2008), within the context of the justice sector response.

Aside from the narrative that can flow from a 'good' interview, it is the key method of recording non-verbal communication in human research studies. In a study about an innately private, stubbornly invisible, societal harm and criminal offence, it is important to record what was not said: not to fill-in gaps or draw conclusions (Duncombe and Jessop, 2012: 116), but to listen to the space between the lines and what was not mentioned. Between these two – the spoken and the unspoken – there are long pauses: Farrimond's (2013: 104) "deep breath moments," the visible swallowing of doubts prior to speaking (see also Brannen, 1988: 554). Without a one-to-one interview, it would not be evident that this is where disclosures spill: this is the raw, the personal, and usually the truth.

Prior to starting interviews, I anticipated that the value of support worker interviews was to provide context and assist me to sensitively and appropriately prepare for the interviews with the victims themselves. However, the support workers who volunteered to be interviewed were all grassroots workers with personal one-to-one relationships with the women they support. They were anonymous in the interview process and spoke as individuals, not as named representatives of their employers. Thus, the interviews were fruitful, honest and rich.

Initially, I planned to interview approximately six support workers with the key research focus on the victims themselves. Four factors led to a shift in my approach, so that ultimately I interviewed 19 workers. First, speaking to workers was far more useful than I had predicted. They gave specific examples of challenges faced by individuals but were also able to generalise about patterns of issues. Their evidence is distinct from the evidence provided to the government consultations because it lacks an institutional agenda: they had the

freedom to speak as individuals and, whilst there is undoubtedly some participant bias, based on their employment, their anonymity allowed them to talk freely.

Second, some of the participants made disclosures on and off tape that they had been victims of abuse and had personal experience of reporting. This taught me early in the research that my categorisations of support and advocacy workers, victim and professional imposed artificial and misleading identities; the lived experience of domestic abuse pervaded all categories. As a result, I interviewed some workers twice: once about their professional experience and once about their lived experience of abuse.

Third, the advocacy and support workers *wanted* to talk to me. The reality of challenges faced by researchers in gaining access to interview participants makes this as important as it is simple. Speaking to someone who is fearful or reluctant or hesitant to talk to you is not an insurmountable barrier within law. It is an everyday hurdle in a courtroom, where a legal imperative necessitates it. However, it goes against the ethical grain of the methodological approach adopted for this research. Within this context, the willingness of participants to speak to me becomes key.

Fourth, the advocacy model adopted by each agency reflected a discrete approach and attitudes towards the efficacy of the court process varied. The relationship between the IDAA and the women they support became a focal point of my findings.

Additionally, whilst the *extent* to which advocacy workers – and other professionals – would have lived experience of domestic abuse was underestimated at the outset, it was not ignored. The potential vulnerability of all participants was recognised. Accordingly, it became important to prioritise the best interests of the research participant over the research project and to adapt the methodology where necessary, including increasing the number of worker interviews. There is an ethical duty not only to research participants, but also *potential* participants. There was overwhelming support for the research project within the organisations visited, and a perception by workers that it was an opportunity for their views

to be heard. To fail to acknowledge this, could have led to a misconception of their significance. It must also be conceded that the workers were the gatekeepers to access to victim interviews; their collaboration was key.

#### 4.2.2 Ethical Interviews: Doing the 'Right Thing' and Doing 'No Harm'

Liebling and Stanko (2001: 424) provide a good basis in deeming research ethical if it “safeguards the rights and feelings of those who are being researched.” Farrimond (2013: 66; 142) details the balance between giving participants a ‘voice’ and managing the risks of their participation. This is a central challenge in such feminist research and highlights the importance of clarifying an ethical approach at the outset. Edwards and Mauthner (2012: 19) moot three prospective ethical models: the relatively uncompromising ‘duty of ethics principle;’ the ‘utilitarian ethics of consequence’ (in effect a cost/benefit analysis); and a ‘virtue ethics of skill,’ (largely dependent on the moral compass of the researcher). In resolving the best approach, they rely on the work of Hill Collins (1991), who cherry-picks aspects of each approach to advocate an ‘ethics of care.’ Within a feminist framework, this is loaded with connotations of women as the ‘caring’ sex and, by some interpretation, not capable of autonomous analysis, instead in constant discussion and exchange with participants. Such an approach is arguably misguided: failing to address the realities of the (lack of guaranteed) impact of many research projects and placing a greater onus on the researcher to manage expectations; potentially raising unrealistic expectations in participants through shared governance of and increased responsibility for the research project; and introducing the ethical complication of competing needs and views amongst participants or between the researcher and the researched (Brooks, 2014: 96).

Thus, a simple – but uncompromising – duty of care model or ‘ethics of principle’ has been adopted here. The research strives to recognise the sensitivities of the topic and the potential vulnerability of the participants; make no assumptions or generalisations about the participants; and to ‘do no harm’ (Herman, 2001). The context of interviews within the wider research is also deemed ethically important. Whilst an ethical model that *presumes* research-influence has been rejected, a model has been adopted which strives to *predict* the research sphere of potential influence (Fitz-Gibbon, 2014: 255). Rather than compromising the

integrity of the research (Edwards and Mauthner, 2012: 16), such an approach is considered responsible (Gillies and Alldred, 2012: 57), because it positions the relevance of the research within the wider framework of policy and practice. It is insufficient to ensure care in the *conduct* of interviews, if the *content* of the interview itself bears little relevance to the aspect of social life being examined. It is also recognised that an ethical duty extends beyond the conduct of interviews and that it is important, as a researcher, to ensure “flexibility to negotiate the ambiguities of ethical compromise and honour ethical values” (Armstrong et al. 2014: 207). Thus, I have committed to reflecting on an ethical interpretation throughout, which has led to turning down some interview opportunities and limiting the use of data emanating from others, particularly where a victim’s involvement in the process was ongoing and I felt that the roles of researcher and prosecutor would be too meshed. I avoided situations where a victim may have felt that participation in the interview would influence an ongoing case.

There must be an appreciation of what motivates women to support others (Pizzey, E., 1974), and this research recognised from the outset that service providers must be treated sensitively (Schneider, 2000: 96). Thus, all participants were treated as *potentially* vulnerable (see Farrimond, 2013 on vulnerability as subjective and changeable) and interview discussions as *potentially* sensitive (Lee, 1993: 3; Renzetti and Lee, 1993: 4). It is worth pausing to remember two things: first, that each woman’s relationship with their abuser is different and that I did not seek to understand or probe into those relationships; second, that domestic abuse is intensely private and will remain so, no matter how much we aim to expose it. Relationships are private, and asking women about those relationships can feel intrusive (Hoyle, 2000). In the interviews, I sought an inclusive, non-hierarchical, non-judgmental environment (Oakley, 1981) in *contrast* to the courtroom. This guided my methodology to be flexible and reflective throughout (Davies, Francis and Jupp, 2011).

I also judged it important to ensure good rapport with my research participants, so that they felt comfortable. Duncombe and Jessop (2012: 108) suggest that, when rapport-building becomes an intrinsic part of the job of a researcher, it can start to feel ‘phoney.’ There is a distinction between rapport-building as a tick-box model for conducting interviews and spontaneous rapport between researcher and participant in a meaningful engagement. Oakley



(1981) suggests that the closer the relationship between the parties, the finer the ethical balance. This was pertinent to the current research project, given my pre-existing relationships with the gatekeepers and some of the subsequent participants, but contributed depth to the interviews (Dobash and Dobash, 1979). I wanted the participants to share what they felt was important, beyond what they were specifically asked and therefore ensured that there was time and flexibility in each interview despite pre-prepared questions (Brannen, 1988: 553).

#### 4.2.3 Identifying and Sourcing Interview Participants: The Selection Process

It is a challenge to gain access and to persuade women to take part in research and talk about their experiences. The impact of secondary victimisation from court attendance and re-visiting traumatic events is well known (Sanders and Jones, 2011: 282). This influenced my approach to selection for, and conduct of, interviews. I recognised the merits of interviewing women who were helped by a support organisation: not only could the support organisations help to gain access, they also offered provision of support around the interview. I chose to speak to workers first to gain their perspective on victims' concerns around court and ensure thorough preparation for the victim interviews.

##### *(i) Workers*

To gain access, I initially spoke to two support organisations: SWA and local groups and ASSIST advocacy service. I chose these organisations because of their prominence in the field and my professional relationship with them. Both train staff to be IDAAs through the nationally recognised *Safe Lives* programme<sup>128</sup> and both provide advocacy support to victims of domestic abuse. The structure of Women's Aid in Scotland was discussed above. The local groups I approached are narrated below, but my initial contact was with SWA as an organisation with oversight and access to all of the local groups. This was helpful in terms of endorsement of the validity of my research question, at the stage of funding and placing an application and subsequently at the stage of submitting an application to the Ethics Committee. A community domestic abuse project subsequently became involved and

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<sup>128</sup> Details are available at: <http://www.safelives.org.uk/training> Accessed: 27/06/18.

individuals approached me, but broadly my two initial points of contact provided access to the workers and – through the workers – to the victims. Networking within a framework of existing contacts and attending relevant conferences and events led to promotion of the research and encouraged a degree of “snowballing” of further respondents (Miller and Bell, 2012: 62).

Interview preparation was about question preparation and liaison with the organisations’ gatekeepers and gaining trust with interviewees. Building rapport and ensuring someone is at ease are essential parts of the interview process, but they are not a material part of the subsequent interview data, nor are they sensitive. I found that I could provide information about myself and research aims, and take time to get to know the workers and their views, within a group setting. It is a non-threatening environment for discussion and provided a space for the workers to consider if they would like to participate in the research and give voluntary and informed consent (Miller and Bell, 2012: 62). This was important as the service managers were effectively gatekeepers to staff, and I needed assurance that workers could contact me directly to take part without colleagues or managers knowing. It was also subsequently helpful within the one-to-one interviews, as participants had, in most instances, previously met me and understood the aims of the research. It was not always possible to adopt this model, but, where possible, I attended team-meetings and spent time within the offices prior to conducting interviews.

The independent advocate model means that most client work is one-to-one, confidential and – in the case of ASSIST – over the phone, so it was not possible to replicate this practice for victim interviews with ASSIST or Women’s Aid groups, making me more reliant on the organisations as gatekeepers. However, I attended a group session within the community domestic abuse project and chatted to a group of women about the research before conducting any interviews there.

During my fieldwork, *Speaking Out*,<sup>129</sup> a Big Lottery funded project to chart the 40 year history of Scottish Women’s Aid, asked if I would write a blog review of its exhibition.

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<sup>129</sup> <https://womenslibrary.org.uk/discover-our-projects/speaking-out/> Accessed: 27/06/18.

Following the posting of the blog (Forbes, 2017), I was contacted by a woman who had read the review and subsequently became an interview participant. I was also contacted by another Women's Aid group, asking if it could become involved. Despite the geographical and time challenges of including this rural group in the project, I was keen to explore the dynamic of attending court in a rural setting, an issue highlighted in one interview, but not fully explored. The manager subsequently left the group before its involvement in the research could be fully evaluated. When I subsequently made efforts to contact the group and identify the new manager, my calls were returned by a male from the local Council. In light of the legal dispensation Women's Aid groups have to only employ women,<sup>130</sup> this made me feel uncomfortable and after concerted efforts to reach one of the workers by phone and email, I withdrew.

During my fieldwork, an ASSIST manager suggested that a local community domestic abuse project might engage in the research. The manager of this project, formerly an advocacy worker at ASSIST, was a colleague during the pilot domestic abuse court. This is a small project with limited resources. I did not approach them initially as I did not think that they could absorb supporting the research. However, following ASSIST's suggestion of their likely enthusiasm, I contacted them. I received a significant proportion of my interview referrals from the project, and they made a valuable contribution to the research.

## *(ii) Victims*

Ethical interviews with women who had been victims of abuse expose risks in relation to both the sensitivity of the research topic and the potential vulnerability of proposed participants. Given my role as a prosecutor, I also identified an additional ethical consideration in relation to interviewing victims who were still involved in live proceedings in the criminal justice process and those who were not being supported by a third sector organisation. Shapland et al. (1985: 4) identified that most victim studies look back, which can mean victims forget details or alter their perspective as they pass through the process. I suspect that advocacy support influenced some of the language used by my participants and

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<sup>130</sup> Equality Act 2010, schedule 9, Part 1.

that they had had an opportunity to reflect on the process. Nevertheless, these potential limitations were outweighed by my ethical commitment.

There are limitations to only interviewing women who were formally supported through the court process. Research findings are arguably richer if there are participants who did *not* receive any such support (Kelly, 1987). However, not only is this a much harder group to reach, but there are ethical concerns around their inclusion such as greater potential for conflict of interest with professional role, lack of through-support around the interview process, and increased vulnerability. Where an individual has not received support from any agency, she may have no contact with any authority between giving a statement to the police at the outset and being cited to give evidence in court. This could be a period of a few weeks or several months. There is a high likelihood that those individuals will have little or no understanding of the criminal justice system. A Procurator Fiscal depute conducting research may seem suspicious or may be viewed as an avenue to have queries answered. Further, the lack of support agency involvement also impacts on the ability of the researcher to provide assurance that participants will be supported in the interview process and that the research will ‘do no harm.’ In all of this assessment, it is clear that such women are at increased risk of vulnerability, making the ethical demands higher. I therefore elected only to interview those who had support.

#### 4.2.4 Gatekeepers: Interviews with Support Workers

The relationship between gatekeepers and the researcher is pivotal to the success of a research project. I was advantaged by pre-existing relationships. Nevertheless, the realities of constrained budgets, an increased case load and future financial uncertainty weigh heavily on them. The challenges explored by Davies and Peters (2014: 36) of “gaining and sustaining” buy-in from gatekeepers for the research project resonated. Letters of endorsement from Scottish Women’s Aid<sup>131</sup> and ASSIST<sup>132</sup> accompanied the application to the University Ethics Committee. Without this support the research would have been far

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<sup>131</sup> Letter from Marsha Scott to the Ethics Committee, dated 03 June 2016.

<sup>132</sup> Letter from Mhairi McGowan to the Ethics Committee, dated 03 June 2016.

more difficult, but it was not a direct route to staff, nor was it a guarantee that employees would want to speak to me.

(i) *Scottish Women's Aid*

Following the grant of ethical approval, I arranged a meeting at SWA. Whilst Women's Aid in Scotland has historically been a collective and has avoided hierarchy (Cuthbert and Irving, 2001: 57), I chose to approach SWA to seek advice on which groups might be prepared to speak to me and whom to contact. I was also more familiar with key personnel at SWA than in the local groups and introductions were valuable. Inadvertently, by doing so, I added a layer of gatekeeping (Jupp, 2002: 134) and a potential power dynamic (Miller and Bell, 2012: 61). However, their advice on appropriate groups and introductions to the groups were useful. It was suggested that an approach would be made to two Women's Aid groups; one was described as a progressive group (herein service A), which has taken part in other research projects, and the second (herein service B) was identified because of its larger size and location.

I attended SWA's annual conference and met the manager of service B. She was initially hesitant to talk to me, following previous poor experience with researchers. Skinner et al. (2012: 45) found that feminist gatekeepers "can often be the hardest to convince." However, following the conference, I contacted her with an outline of the research project and my aims and motivation, which persuaded her of both the utility of the research and my commitment.<sup>133</sup> Following an introduction by SWA, I wrote to the manager of service A and secured her support. A mixture of the personal and professional has been useful throughout the fieldwork phase of the research: it has been important to impart not only the subject of the research but also personal motivation, as an illustration of integrity.

With both Women's Aid groups, my correspondence was with the local manager. I sent them information about the research project and liaised about dates to visit. My first visit to service B was part of a small-scale scoping exercise early in the first year of the research. I

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<sup>133</sup> I promised to return to each organisation after completion of the research, to relay my findings.

was introduced to two support workers – one outreach worker and one refuge worker – who were willing to be interviewed. Exploring consent with them, their enthusiasm to take part was unerring, and they were engaged in the interview: concerns regarding selection of ‘volunteers’ diminished. However, when I returned some months later, I was introduced to one worker who was available that day to speak to me. She presented as nervous and uncomfortable. Whilst she consented to the interview and to digital recording, it was with some visible hesitation. Several aspects of the interview created barriers: I was aware of her discomfort; the interview took place in the manager’s office; and questions were answered but information was not volunteered. I cut the interview short to her visible relief. It is possible that the participant was nervous by disposition, despite her knowledge and expertise being impressive. However, the interview has been included only to the extent that emergent themes accorded with other interviews, and no direct quotes have been taken from her transcript.

Reflecting on this, a review of participant selection became essential. I asked both managers to circulate my introductory email directly to all workers, asking anyone interested in taking part in the research to contact me personally, thus reducing the likelihood of participation to appease managers (Berg, 1995: 210). The response was mixed. I received three responses from service B, but subsequently only two made themselves available for interview. I interviewed four in service A (including the manager), which is representative of a reasonable proportion of their staff.

During this process, I attended a training event and met a refuge worker from service B, who invited me to visit the refuge. This led to my only joint interview, as she asked if the Children and Young Person’s worker could contribute. The result of this improvisation from my methodological plan was a useful and thought-provoking discussion. Whilst the fieldnotes from this interview have contributed to my analysis, I have chosen not to quote the workers, as the interview did not offer complete anonymity.

(ii) *ASSIST*

I have a long-standing professional relationship with key personnel at ASSIST. Some of the senior staff were involved in the original pilot team at the outset of the specialist court; others I have worked with in the intervening period. However, the ASSIST team has expanded significantly since its inception and I had not met all the advocacy workers. Whilst I therefore still relied on the managers to act as gatekeepers, I had much more open access to staff than I did with Women's Aid. I was a trusted entity within ASSIST. Due, in part, to the trust and the buy-in of the managers and partly owing to a keen understanding by advocacy workers of the impact of court on women's lives, there was a greater willingness to participate. I attended team briefings in three locations. My fieldnotes from the team briefings contributed to my analysis, and as a result, I interviewed seven advocacy workers and received a number of referrals from them. The interviews exposed overlapping but distinct themes from the Women's Aid interviews, reflective of the difference in their role and ethos.

### *(iii) Community Support Project*

I was also fortunate to have a pre-existing relationship with the manager of the community support project, as she was involved in the pilot domestic abuse court. She harnessed a great deal of enthusiasm for the research and several women supported by her have contributed. Her engagement in this research topic went beyond buy-in as a gatekeeper; indeed the community support project has become integral to follow-up research and a collaborative community art project, inspired by this research is underway.

#### 4.2.5 Interviewees Becoming Gatekeepers: Interviews with Victims

The advocacy support worker participants became gatekeepers in sourcing victims of domestic abuse prepared to take part in the research. Having raised the issue at the end of each interview, I followed up with an email of thanks and asked them to consider whether they would consider clients who may be potential participants. I also recruited through a post in the ASSIST weekly Bulletin, which, as explored in chapter three, has a wide readership amongst those working within the violence against women field: Scottish Government;

Police; Crown Office; charities; and NGOs. Despite this wide dissemination of information about the research project and a general plea for referrals via organisational team-briefings, the majority of referrals came from workers who had been interviewed themselves for the research, presumably because of their personal investment in the project. The key challenge was the timing and rate of referrals, rather than volume, which made time-management of the fieldwork more difficult. Referrals were not always made at the time of asking, but came when a worker was particularly affected by a case and took the view that the woman would be ‘ideal’ to speak to; or a chance meeting in court or at a conference prompted them to remember their promise. Thus, whilst the managers as gatekeepers were a determinant factor in whether or not the research would *generate* data, to a large extent the workers as gatekeepers were a determinant factor in the *nature* of the data generated. As they were also participants in the research (and many were affected by abuse themselves), I consider this gatekeeper-effect a positive impact on the research: it is another way in which their voices were heard.

Altogether, I received 25 referrals for victim interviews: four were unsuitable, due to potential conflict (3) and experience of a different jurisdiction (1) and six withdrew. Thus, I conducted 15 interviews.

(i) *Scottish Women’s Aid*

I received six referrals from workers at Women’s Aid. I received two referrals from one worker within service B. The first was conducted by telephone, after lengthy discussions about support for the woman and ensuring that she had a clear understanding of what was involved. The second related to a case where there was an ongoing deferred sentence and it would not have been appropriate to conduct an interview.

One refuge worker advised that she was not currently supporting any women who were involved in the court process. The interviews with support staff working within refuge, whilst anecdotal, corroborate the literature which suggests that those receiving safe



accommodation within refuge are less likely to report to the police (Stark, 2007). It also points to less engagement, within the organisation, for institutional advocacy to women of the benefits of the court response.

I received four referrals from service A. I spoke to each of them on the telephone and briefly explained my background and the aim of the research before scheduling an interview. Three were relatively straightforward to arrange, whilst one repeatedly cancelled and postponed. Her support worker subsequently moved on, and I judged it inappropriate to continue trying to contact her. Thus, I conducted three interviews there.

(ii) *ASSIST*

I received ten referrals from the advocacy workers. Two were self-referrals from workers willing to talk to me about their personal experiences. One gave a joint interview, in which she answered questions about her role as an advocacy worker before we went on to talk about her experiences of court as a victim of domestic abuse. The other worker had fled to Scotland from the north of England, and her experience of the court process was from a different jurisdiction. Of the remaining eight referrals, two were rejected on the grounds of a potential conflict of interest: one because she had reported Crown Office to the Information Commissioner for mismanagement of personal data and the trial had consequently been adjourned and was ongoing at the time of conducting fieldwork; and the other because I was the PF depute in court for the deferred sentence hearing and had personal knowledge of the case. Two made appointments to see me at the local police station, confirmed the appointment by text, and then failed to show up. In one case, she contacted her advocacy worker to say that the perpetrator had been in contact and life was increasingly difficult. Two responded to text messages to say that they would like to take part, but after several weeks had not committed to an interview time, and I withdrew. Thus, I interviewed four of the ten referrals. This was disappointing, but partly due to my knowledge of some of the cases and an ethical recognition of difficulties for others in taking part.

(iii) *Community Domestic Abuse Project*

I received seven referrals from this project despite its relatively small size and interviewed the manager. Within a week of making contact, two of their clients had indicated that they would be willing to talk to me and interviews were scheduled. They were scheduled to coincide with a civil court support group, where I was given a platform to talk about my research. Afterwards, all four attendees and the manager, who was facilitating the group, consented to be interviewed. She subsequently referred three more women, two of whom were interviewed; one withdrew. This level of engagement is undoubtedly due to the enthusiasm and support of their manager who advocated on my behalf. Her integrity would not lend itself to doing favours: she supported the research on its merits. This reinforced the need to manage the expectations of all of the research participants, especially those with whom I had a pre-existing working relationship and who had placed great store in my own enthusiasm to drive change.

This represents a total of 15 interviews with victims.

#### 4.2.6 Shifting Identities

In addition to the two advocacy workers who were interviewed about their personal experiences, I also spoke to a colleague – and friend – from within COPFS, who had reported her ex-partner and had subsequently given evidence at trial. The key methodological challenge with these interviews has been preservation of anonymity (Miller and Bell, 2012: 79). Whilst reasonable steps have been taken, it must be recognised that they are more easily identifiable. I explored this concern with each interviewee in advance to ensure that they appreciated that their colleagues may attribute some of their remarks, based on public knowledge of their court case. Each participant understood the risk factors and was happy to proceed (Miller and Bell, 2012: 79). My colleague self-referred through her ASSIST advocacy worker and did not approach me directly. We had a long and frank conversation about the ethics of the interview: what I was trying to achieve; what I would do with the information she shared; how we would continue our friendship and work relationship afterwards; and the implications for her.

These interviews, in particular, challenge assumptions on the ideology of victimhood and what it means to be a victim. They also provide a different experience perspective, given the participants' knowledge of the system. In some instances, the experience of lived abuse was the catalyst for moving to work within this sector, which led to reflective remarks about their experience, based on current knowledge of the justice system. In another, the reverse was the true. A colleague of many years' experience found herself in a shifted role within the process, unsure of her ability to proceed as a professional. Both perspectives, distinct from others' experience of the court as an alien environment, provide a useful narrative, explored in chapter seven.

#### 4.2.7 Interview Planning and Approach

##### (i) *Workers*

I was keen to explore the extent to which *Equally Safe* (Scottish Government, 2014; 2016c) informs the grassroots, consciously or otherwise. I also wanted to understand more about how risk assessments are carried out, their purpose and utility, and how they impact on professional relationships. These questions were not meticulously excavated from literature and informal interviews in the manner advocated by Gilbert (1993: 142). Rather, they were the distilled product of combining court observations and experience with the academic literature.

My approach to the pilot study was to adopt a feminist, open question, semi-structured, conversational style (Berg, 1995: 31; Gilbert, 1993: 137). I supplied proposed interview questions in advance, so that they would appreciate the areas I wished to cover, which allowed the conversation to flow. The pre-prepared questions covered the model of support they offer, their experience, the risk assessment, and their knowledge of *Equally Safe*.

I found that whilst there was good flow and the interviewees provided valuable data, it was hard to control the length –and sometimes the direction – of the interviews. Planning ahead,

where there would be a larger volume of interviews and specific topics I wished to cover, I refined the format and emphasis. The decision to take slightly more control of the interviews was influenced by legal training and a recognition of my own personal style. Reflecting on the fact that I interviewed a much larger number of workers than initially anticipated, the refinements to the interview format were appropriate.

I prepared a list of six simple questions. The interview plans were slightly different, depending on the organisation.<sup>134</sup> The format remained fluid, and some participants had more to say on one issue than another, but I aimed to cover the six headlines with each participant. The participants did not see the questions in advance, but I provided an overview of the research project and the general areas I wished to cover in the team-briefings I attended and introductory emails I circulated. Supplementary questions in each interview were designed and reserved to elicit more detail; occasionally, they were needed to maintain the flow of communication.

Instead of asking directly about *Equally Safe* – as I did in the pilot – I used the key themes from the policy to inform my questions. Thus, some of the themes that emerged in the interviews were *a priori* from *Equally Safe* and the questions were directed towards getting responses on those points; for example, partnership working, safety planning and the risk assessment. Other themes were grounded in the interview process and evolved post-interview. These are explored below.

Interviews took place at the worker's place of work, unless they specified that they would like to meet somewhere else.<sup>135</sup> Interviews lasted an average of 40-60 minutes. To ensure informed consent (Lee, 1993: 102), I provided an overview of the research, consent forms<sup>136</sup> and a plain language statement<sup>137</sup> in advance and revisited the issue of consent at the outset of each interview. I started with a brief general chat; a review of the purpose of the research;

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<sup>134</sup> Interview plans at appendices two and three.

<sup>135</sup> One worker requested an alternative venue and the interview took place on the University of Glasgow campus.

<sup>136</sup> Appendix four.

<sup>137</sup> Appendix five.

reasons for wishing to record the interview, permission to record and the consent form. It was explained to each participant that she would be anonymous in the process; that she could see her transcript afterwards if she wished; and that she could withdraw consent at any stage. The interviews were usually within a meeting or interview room, which provided a confidential and quiet environment for recording, if somewhat formal setting.

(ii) *Victims*

Advocacy and support workers who had taken part in the earlier stage of the fieldwork were the main referral agents, enabling the participants to know something of the research project in advance. Interview arrangements were made by telephone. Two participants requested telephone interviews. Initially reticent to demur from the commitment to face-to-face interviews, it became clear to me that these particular women would only participate within certain parameters; I acceded. Where possible, interviews were co-located with advocacy support services and with two women, at their request, a support worker observed the interview. After all interviews, referral back to the original support organisation was offered. Where the interview was in a separate location or by phone, I contacted their support advocates and asked them to make a welfare check.

At the outset of each interview I provided an overview of the research project and personal motivations. This cemented the information that they had already been given on the phone, both by the referring advocacy worker and by me. Issues of consent were explored. The interviews typically lasted longer than the worker interviews; generally between an hour and two hours. One of the emergent themes in every interview was the sense that they did not have a voice in the court process and had not been listened to. Having hypothesised that this would emerge, I did not want to put a time limit on the interviews and afforded women the time to tell me everything that they thought was important. Thus, whilst broad questions were pre-prepared and themes had been identified, these interviews were relatively unstructured (Gilbert, 1993: 137), a format I found difficult. I avoided the temptation to constantly clarify and press for details and allowed a free flow of the woman's narrative. The interviews were recorded, and women were asked to talk about: the initial call to the police;

what happened after initial police contact; agencies with whom they had contact; what happened when the case went to court and how they felt about it; and how they felt about the outcome. The questions were designed to be clear and unchallenging. It was open to the woman to simply answer the questions or to tell me her story. Where a story – or a partial story – was shared, the narrative and the answers were fuller. However, not all women revealed personal background information beyond the answers to the questions. Despite providing rich data, most of the stories were chronologically muddled and I found this frustrating. As a lawyer, I am trained to seek clarification and challenge inaccuracies. After the first few interviews I revisited the literature on feminist-grounded research (Skinner et al., 2012) and my rationale for planning the project this way. On reflection, I realised that the lack of clarity in women's narratives highlighted their poor understanding of the criminal justice process and their own unanswered questions. I revisit these aspects in my findings. It taught me, however, that the way a story is told is as important as the story itself, and my approach to the interviews, whilst personally challenging, was appropriate within the parameters I had set.

#### 4.3 Analysis and Coding

Brief notes were made during the interviews, provided it did not impact on eye contact, listening and engaging with the participant. Detailed observation/fieldnotes were made immediately afterwards. The recordings were transcribed *verbatim* as soon as possible after each interview, typically within a couple of days. I wished to reflect repetition, verbal ticks, pauses which conveyed the emotion with which these interviews were given, to present an authentic record. Notes were augmented during transcription/review of the recording. Where possible, interviews were diarised to allow for almost immediate initial analysis and transcription. All participants were anonymised and given pseudonyms. Throughout the thesis, the workers are designated by their pseudonym and their organisation, whilst the women are just given a pseudonym. The specific Women's Aid groups and the local community group have been anonymised. ASSIST, as an organisation, has not been anonymised because of the detail in the specific role it fulfils and the organisational commitment to being a visible part of this research.

The interview transcripts were then analysed line-by-line and important points highlighted (Erez and Ibarra, 2007: 105). Recurrent phrases, key words and themes (whether drawn from *Equally Safe*, or grounded in the interviews) emerged. I adopted Glasser and Straus' grounded theory to code the interviews in that I sought "the discovery of theory from data, systematically obtained and analysed in social research" (1999: 1).

A colour coding system was developed, and the interviews were coded manually. The first six worker interviews reaped 19 codes. More emerged from later interviews, as each individual transcript was analysed afresh in a constant revision after each interview. Determined to ensure depth and empathy in my analysis, I discounted analytical software and re-read all of the transcripts regularly throughout the data analysis and writing up process. I discovered new perspectives on each occasion and consider it worth the time and emotional investment (Bosworth and Blerina, 2017; SCCJR, 2018<sup>138</sup>).

After the interviews and their initial coding, they were cross-referenced, relating the emergent themes back to the original research questions and the existing literature, in an analysis which involved mixing 'coding up' and 'coding down' (Gilbert, 1993: 227). In coding up, I identified themes from *Equally Safe* and from the review and analysis in chapters two and three. For example, I was interested to analyse views of the risk assessment and safety planning. This was a relatively straightforward process and seemed to 'work' in terms of prescribed approaches to coding in grounded theory (Glasser and Strauss, 1999). Having specifically asked workers about their approach to risk and partnership working, it was easy to identify those themes in their answers.

Coding down was a more complex and iterative process, as I was absorbing the data. For the interviews of the women themselves, I adopted a less targeted approach to questioning and was more open to emerging themes. Initially, I highlighted participant's key messages in each transcript. These were identified by repetition and language. I surmised that repetition; a raised voice; a pause prior to disclosure; blinking back tears; or direct language telling me something was important, were all key indicators of what mattered to my participants. I

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<sup>138</sup> SCCJR ongoing research project on vicarious trauma. Available at: <http://www.sccjr.ac.uk/news-events/events/working-with-women-and-girls-experiences-of-vicarious-trauma/> Accessed: 22/04/18.

rapidly appraised that the complexity of women's lived experiences could not be categorised neatly into a colour-coded chart and that I was highlighting whole pages or under-lining sections in three different colours, as they didn't talk distinctly about 'risk' or 'safety' but in a knotted, truthful spill of their own experiences and emotions. I re-visited the literature on grounded theory, which re-enforced my view that I was adopting the right 'method' for my data, but provided no clearer guidance on how to 'code' my interviews. I re-read all of the transcripts as one story and recorded my own emotional response to them and what echoed as important. From this, I recorded feelings, emotions, moods and not key words for a code. Reviewing these messages together, a picture emerged of women who were concerned for their own safety and the safety of their children. They were resilient in their own lives *despite* the additional traumas of the criminal justice response and the disconnect between their expectations and the reality of an over-burdened and uncompromising structure. From this, I distilled key words: risk; safety; fear; waiting; life continuing; misunderstandings of court process; women's autonomy and agency; waiting; when?; why?; voices not heard; and hope. From this, I carved the themes reflected in the following chapters. Determined to remain true to a feminist, reflective approach, I repeated this whole process with 'clean' copies of the interviews after drafting the findings chapters. I was keen to ensure that I had not fallen foul of pigeon-holing women's stories into themes or forced any of the data to fit the emerging theory. Chapter five explores the *a priori* themes from Equally Safe, focusing on the management of risk, advocacy and partnership working. Chapters six and seven highlight the themes grounded in women's stories, namely the implications of waiting and their lack of voice and agency in the process. The chapters also explore why women seemed to lack understanding of the court process, despite involvement in it and what this teaches us about barriers to justice, including the implications of the civil/criminal demarcation. In this way, the findings chapters reflect both individual perspectives and reflections on current policy to identify apparent gaps.

This thesis relies on a detailed professional knowledge of the police investigation and criminal prosecution in Scotland which is not available in any published literature. Knowledge of internal processes, nuances of decision-making and the realities of the burden of proof all stem from almost twenty years as a public prosecutor. I have highlighted where my professional interpretation of data findings refutes academic commentary and have pre-fixed opinion or observation as "anecdotal evidence." It is this experience which allows me



to triangulate my data sources from the chosen methodology design and to question the accuracy of data and corroborate sources (Bryman, 2004: 275).

#### 4.4 The Role of the Interviewer: 'Bias' and Blurred Roles

In addition to the shifting roles of the interviewees explored above, there was also the blurred role of the interviewer. Lee concludes that 'interviewer effect' has little or no impact on the outcomes of a research project (1993: 100). However, within this project the interviewer role has undoubtedly framed the research project. All of the interviewees were aware of my professional role as a Senior Procurator Fiscal depute, and I had pre-existing professional relationships with some of the gatekeepers, some of the workers and some of the victims. I was working within the Domestic Abuse Unit of the Procurator Fiscal Office in Glasgow during most of the fieldwork. Of ethical risk to the project, it had the potential effect of raising expectations that the professional position of the researcher would increase the likelihood of a positive response from government and the formal criminal justice agencies to the research. It also created the risk of a perception of a mutual agenda which raised concern at points (Oakley, 1981 on getting too close). Thus, it was important to emphasise at each team briefing and at each individual interview that the research was an academic endeavour that could not be guaranteed to deliver policy change. In relation to the interviews with victims, it was crucial that there were no false hopes that I could effect change in their individual case. This was the driver for an early decision to only interview victims who had been through a completed court process.

##### 4.4.1 Interviews with Workers

In addition to the benefits of access to workers, the action of stepping back from my prosecutorial role to 'listen' to them and their clients was deemed the most compelling illustration of commitment to the research:

“At least you are putting your money where your mouth is, you are listening to women and to workers and that means a lot to us.” (Chloe, ASSIST)

The interviewees were generous with their time and open in the information they provided. The workers spoke in professional shorthand which meant that we could cover a lot of ground within one interview. There was assumed knowledge in their responses, which related to the court process; references to named individuals and specific courtrooms; and court shorthand. All references to named individuals were redacted from the transcripts and not taken into account in the coding and analysis, as subjective views of individual prosecutors, solicitors or sheriffs were not deemed relevant.

Whilst the specialist knowledge was useful in expediting the interview process and getting the most out of the interviews relatively quickly, they do call for some explanation. Colloquialisms, as they appear, are interpreted. Miller and Bell (2012: 81) counsel against such shared language and its shortcuts, concluding that it is ‘seductive’ to the insider-researcher but risks misunderstandings, as assumptions are made about meaning. I have recorded what was said and how I interpreted what was said and assess that ‘speaking their language’ makes me more attuned to their verbal short-hand. Further, had I sought clarification of abbreviations they knew were within my vernacular, it would have stilted the interviews and confused the participants with a false formality which may have jeopardised genuine rapport.

It was clear from the interviews, as is explored in chapter six, that there is little contact at a grassroots level between prosecutors and advocacy workers. The interviewees took advantage of open access and I received a steady trickle of legal enquiries following the interviews. In one interview, I was asked about the role of the PF depute in a specific case and whether or not I felt that a colleague’s position was appropriate. There were also questions off-tape about my experience and what I thought of certain scenarios. Within the interview setting, I explained why I could not comment on a colleague’s decision-making and reminded the interviewee that I was acting in an academic research role. Outwith the interviews, I have tried to help with general legal queries, but avoided making case-specific observations.

#### 4.4.2 Interviews with Victims

Prior to the interviews, I was concerned that women who had a negative view of the court process would not want to speak to me because of their opinion of the Procurator Fiscal – whether individually, or as a service. All of the women were aware of my dual role. Some asked questions about their experience of court. The gatekeeper role of the advocacy workers in securing the interview participants means that they controlled how my participants were selected. This was the price paid to secure a participative group. The participants were diverse and represent a broad cross-sectional demographic: white; Asian; professional; working class; unemployed; other vulnerabilities including illness; mothers; and those with previous experience of the justice system. It is surprising that the group is so diverse, given the relatively small number of women selected from a number of sources. All of the participants had experience of sheriff court procedure, either summary procedure or sheriff and jury proceedings; none had experience of the process in the high court and this is a shortcoming of the findings.<sup>139</sup>

Interviews are a “natural and ongoing” process which may be “emotionally and physically draining” (Davies, 2011b). For many, it was their first opportunity to speak uninterrupted. Recognising the importance of this, my analysis of the interviews has been iterative, returning to the transcripts repeatedly, even after the findings were drafted.

#### 4.5 Conclusion

Despite a specific methodology at the outset, changes were made and my approach adapted. I interviewed more support and advocacy workers than I initially intended, with broadly the anticipated number of women, and I generated a significant amount of data. This was largely down to the enthusiasm of the women I spoke to and their will to be involved. It would have been counter to the feminist framework within which the research was conducted to ignore the voice of any woman who wanted to take part.

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<sup>139</sup> The presumption in favour of prosecution extends to a presumption of action in the sheriff court, therefore I would not have expected participants to have experience of the district court.

I acknowledge the privilege of being an ‘insider’ (Fitz-Gibbon, 2014) and the benefit of genuine, longstanding working relationships. There was no ‘phoney’ attempt to ‘do rapport,’ as impressions had already been made. This allowed wide and relaxed access. Interviewer-effect was at the forefront of my mind, but produced some interesting dynamics, which have arguably strengthened the findings, by further highlighting the pervasive way in which domestic abuse does not discriminate.

The data may have been richer if I had included women who were not supported through the court process, but I made an early ethical decision not to include such a vulnerable group. Further, there was no direct effort in sourcing participants to ensure a cross-section of vulnerabilities: ethnicity; social class; employment status. By chance, notwithstanding the relatively small number of women interviewed from an even smaller pool of source organisations, the diversity of the participants was notable.

Whilst it is recognised that in-depth interviews within a small-scale sample will never suffice to extrapolate or make generalisations about a wider population, there is merit in accurately capturing women’s voices (Skinner et al., 2012: 14). The ways in which this thesis hopes to extrapolate analytical generalisations by analysing the interview data from a foundation of theory and policy analysis was set out in chapter one. The value of such data undoubtedly rises when it is situated within secondary data analysis of other, similar research projects (Mason, 1996: 37), literature on domestic abuse and victimology and a socio-legal analysis of Scotland’s response to domestic abuse; triangulated with practitioner experience of the criminal justice process.

I have deliberately embedded relevant theory within each chapter, rather than setting out a separate theory chapter because of the multi-disciplinary foundation to this research and the lack of one homogenous theoretical basis. Bottoms (2010: 75) suggests a ‘continuing dialogue’ between theory, observations and findings, noting that this relationship will be

close, albeit tense<sup>140</sup> (2010: 75, 113). In this sense, theory can be understood as informing, contextualising and challenging data findings. It seems apposite in a temporal analysis, especially one which challenges a linear appreciation of time in criminal justice, that theoretical implications should weave through the discussions of the empirical findings which follow.

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<sup>140</sup> See Fraser, A. (2010: 69) for an encouraging and refreshingly honest narration of the struggle to identify a single 'theoretical basis.'

## Chapter 5: Advocacy Support: Challenges to offering a Professional Service and the Influence of Risk Assessments

“Advocacy is a crisis intervention, focused on risk assessment and safety planning for victims of gender-based violence with the goal of improving safety and reducing risk of further abuse. Advocacy is also seeking to enable victims to access, navigate and have a voice through the criminal justice process.”

(Scottish Government, 2017b)

### 5.0 Introduction

This chapter explores the support provided to victims of domestic abuse by victim advocates and their role in risk assessing and safety planning. In particular, it critiques the timing of advocacy intervention in individual cases and links to the policy narrative of chapter three to identify wider discrepancies in service provision across Scotland. Women’s Aid groups and smaller, grassroots support projects have been the longest, formal<sup>141</sup> constant in helping women flee from abuse, safety plan within and beyond such relationships and recover. Their support tends to be person-centred, responsive, practical and therapeutic (Arnott, 1990). The shift in public policy which has led to an increase in the investigation and prosecution of domestic abuse has prompted a new approach for some of these agencies, which are adapting to provide court support for women who report. Chapter three charted this development and the introduction of qualified IDAAs, or independent advocacy.

The IDAA qualification may be nationally recognised, but it has been translated, adapted and accommodated by each agency which took part in this research in a different way according to their ethos and governance. This, in turn, impacts upon the ways in which they interpret the risk assessment tool and how they support women through the court process.

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<sup>141</sup> For a discussion of informal support networks see: Hyden, 2015.

Temporal analyses of risk within sociology tend to situate the risk society in a post-modern, post-industrial society (Beck, 1992; Mythen and Walklate, 2006). Such panoramic overviews are helpful in contextualising the current trend towards risk analysis and embedded rhetoric on risk across all aspects of public life (Mythen and Walklate, 2006) and within criminal justice (Feeley and Simon, 1992 and 1994; Ericson and Haggerty, 1997; Walklate and Mythen, 2011; O'Malley, 2015). However, the literature on domestic abuse advocacy lacks detailed, qualitative discussion of the impact of both the risk assessment itself and the language of risk on individual victims (referenced in Robinson and Payton, 2016: 256 and 266). This analysis, which considers the *timing* of the risk assessment for victims and the influence of the language of risk on the role of the victim advocate, further informs the need to realign our temporal understanding of the criminal justice process in domestic abuse cases.

This chapter is in three parts. Part one reflects on the evolving role of the advocacy worker, including the benefits and limitations of the role. Part two analyses the parallel sway of the risk discourse, the expansive use of the risk assessment, and the implications of the risk rhetoric on advocacy provision and multi-agency working. This provides an insight into the impact of women's emotional response on the risk assessment results and the wider consequences of the risk discourse in framing our understanding of how victims experience court. Part three focuses on the court process and highlights the tensions between the advocacy function of augmenting victims' voices in court and the function of assessing risk, when the language of risk is used as currency and short-hand.

## 5.1 The Evolving Role of the Advocacy Worker

Voluntary organisations have always strived to support women emotionally through the court process but the role of the domestic abuse victim advocate was introduced in Scotland, in 2004, to support the pilot specialist court. ASSIST was the first customised victim advocacy service in Scotland and has a formalised relationship with criminal justice partners which ensures sharing of case specific information. This role has evolved and expanded as reporting of domestic abuse has increased. As narrated in chapter three, there are now four court-advocacy programmes for domestic abuse in Scotland. There has also been a pilot advocacy project for victims of sexual assault, 'Support to Report' ('S2R') (Brooks and

Burman, 2017), which adopts a different model. The recognised benefits of advocacy support to victims giving evidence in court (Robinson, 2006a; Brooks and Burman, 2017), yet the different translations of such support have led to a national scoping of advocacy provision (Brooks-Hay et al., 2018).

The current research data emanates from three different organisational models: Women's Aid; a community support project; and ASSIST. This chapter focuses on the advocacy model they adopt. They share the goal of supporting victims of domestic abuse, but there are differences in their governance, approach and ethos. Grassroots charitable organisations offer face-to-face support, and tend to be flexible and person-centred. Women's Aid and the community support project are more victim-led, as they are a step removed from the mechanics of the criminal justice process and fulfil a wider role. ASSIST, which has a more privileged relationship with police, prosecutors and, to some extent, the court, is more fettered by a managerial structure than other third sector support agencies, which has led to a hierarchy of case prioritisation. Identifying these similarities and differences is important to understand the benefits and hurdles to partnership working and their different approaches to advocacy.

Concurrent to an increased case-load, victim advocates are becoming more professionalised through qualification as IDAAs and through administration of risk assessments. Part one reflects on this changing role: what is meant by advocacy; how advocacy works in practice in Scotland; and highlights the benefits, limitations and gaps. Overwhelmingly and unsurprisingly, the research participants in the current research favoured advocacy support. Nevertheless, they identify challenges in navigating the justice process, suggesting that availability and timing of advocacy support could be improved. As Jenn observed:

“I got support. ASSIST was excellent, but there were lots of people who knew a little bit, but...I don't know, I felt throughout the process that there was no great over-see'er who could have tied the thing together and applied common sense.”

### 5.1.1 What is Advocacy



The distinction between victim advocates and grassroots support workers can broadly be understood by the focus of their support, noting that an individual may fulfil both roles. Both are proponents of a person-centred ethos, where individual needs inform a nuanced approach. However, whilst grassroots workers support women with a range of practical and emotional needs, this advocacy model in Scotland focuses on support through the criminal justice process and has been piloted to support victims of domestic abuse (Hester and Westmarland, 2005) and sexual assault (Brooks and Burman, 2017). Advocacy denotes different meaning across jurisdictions (Brooks and Burman, 2017: 4). Whilst there may be no precise definition of ‘advocacy’ (Scottish Government, 2017), it borrows language and meaning from the courtroom and usually contains key components: independence; pro-active outreach; safety planning; information provision; speaking with and for victims; risk assessment; crisis intervention; a coordinated community response and institutional advocacy, as discussed in chapter three above (Scottish Government, 2017b; Robinson and Payton, 2016: 258 include training and knowledge of local resources).

Where there are further emotional and practical needs, victim advocates signpost to other agencies providing wider support, unless – like some Women’s Aid groups and community projects – they offer a hybrid system offering both services. In those cases, they may provide all of the support themselves or they may refer to a colleague. Tailor-made victim advocacy services such as ASSIST are only available in pockets of Scotland.<sup>142</sup>

### 5.1.2 Advocacy in Practice

The victim advocate was introduced to translate the opaque language of criminal justice organisations; explain the process; safely provide courts with the victim’s views; support court-attendance; and minimise the impact of secondary victimisation (Burman, 2009; Kelly

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<sup>142</sup>*Equally Safe* funding has increased year on year, but services are only guaranteed funding until 2020. IDDA roles are being funded within existing organisations, but SG funding of the Professional Development Award in domestic abuse advocacy was only available from 2011-2016 (Scottish Government, 2017). For services on other funding streams, certainty of backing may be only six months ahead (Scottish Government, 2017). <https://beta.gov.scot/publications/vawg-fund-2017-2020/> shows significant budget increase per annum compared to <https://beta.gov.scot/publications/equality-funding-2016-17-violence-women-and-girls-fund/> Accessed 20/05/18. ASSIST is available in: Glasgow; Ayr; Kilmarnock; Paisley; Dumbarton; Lanark; and Hamilton Sheriff Courts. EDDACs is available in Edinburgh Sheriff Court, DASAT in Livingstone and DAAS in Selkirk and Jedburgh.

et al., 2005) and other negative impacts on mental health from involvement in the criminal justice process (Elliot et al., 2014: 589). They are motivated by a will to ensure that women's voices are heard in the court process, but part of their institutional advocacy role ought to involve ensuring that best evidence is secured. The role of the victim advocate in Scotland, similarly to England and Wales, has evolved from its introduction to support the specialist domestic abuse court (Robinson, 2006a). It pre-dates formalised risk assessment tools, the IDAA qualification (SafeLives) and protection of those deemed high risk through the MARAC process. The current data supports research findings that these varied roles sometimes conflict (Taylor-Dunn, 2016). For example, ASSIST will prioritise cases proceeding to trial and victims who are assessed as high risk. The implications of this are explored below.

Despite sometimes competing roles, there is evidence to suggest that victims are less likely to retract from the criminal justice process if they are supported by an advocate (Robinson, 2006; Brooks and Burman, 2017), and advocacy representation lends meaning to the MARAC (Brooks and Burman, 2017). In both of these roles, the strength of the victim advocate lies in his/her capacity to “privilege the importance of individual experience.”<sup>143</sup> Given the findings in chapter seven, relating to victims' lack of voice in the process, this is important.

The commitment advocates share and their awareness of their own responsibility is important to recognise. Jean (ASSIST) voiced what others hinted at:

“you realise you are maybe one of the last people to speak to somebody...when you put down the phone to that person, have you done everything you could in your powers to give them all the information they need and all the options that they've got available.”

The value of advocacy support to provide voice on a woman's behalf and to help navigate the process was articulated by the women I interviewed and their views reflect the existing

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<sup>143</sup> This expression is borrowed, with thanks, from Michele Burman, who used it at the SCCJR annual conference 2016 in relation to the role of the qualitative researcher.

qualitative research (Robinson and Hudson, 2011; Brooks and Burman, 2017). Laura said of the support she received:

“I love what ASSIST did, it’s a shame we have to have these things, but see the help they offered. I never had a clue what was happening, I’ve never been through the court system before, I had no idea...you were just like a rabbit in the headlights and I think because you were in the middle of this and still trying to recover and still not having a clue what was going on, you weren’t very assertive.”

Such a lack of feeling of assertiveness leads to looking to others to provide support and the emotional value of such support was summed up by Joyce:

“A lot of women don’t speak up because they don’t know about the help that’s out there, see like ASSIST and how they can actually help, and obviously I know the police has got to put you onto ASSIST, but it’s not really recognised. I was petrified and Millie from ASSIST took that, no, she didn’t take the full fear away but she made it easier to go through.”

This chapter is predicated on a recognition of the genuine, emotionally attuned, skilled and valuable service advocates, and wider support agencies, provide to victims of domestic abuse. The data findings from this research were unequivocal on this. However, reflecting on the timeline in chapter three, the discussion around a national advocacy model has caused some disquiet and divergence of opinion on the key components of an advocacy model. It is, therefore timely to critically examine the role of the victim advocate.

(i) *Scottish Women’s Aid (SWA)*

SWA is a national campaigning organisation, whose role has already been explored. By contrast, local Women’s Aid groups also provide support to women in the community and in refuge. They remain the largest provider of support in Scotland to women and children affected by domestic abuse (Lombard and Whiting, 2018: 33). The current data emanates

from two Women's Aid groups whose workers fulfil a variety of roles as: Women's Support Worker, Children's Support Worker, Outreach and Crisis Support.<sup>144</sup>

They have traditionally operated independently, keen to avoid a hierarchical structure, but their approaches are becoming increasingly stream-lined. They will meet new, self – or agency – referred women face-to-face and will usually only conduct a risk assessment if they consider it necessary, once they have had an initial meeting and created a support plan. Unlike organisations founded specifically for court support, for Women's Aid the risk assessment is not the central indicator of prioritisation of clients. Seonaid (Women's Aid) was clear that – unlike ASSIST – the risk score does not affect the level of service provision:

“We don't operate a hierarchy in terms of domestic abuse and how we provide service so I wouldn't push someone to the front of the queue because they've got a higher score.”

They work with a flexible definition of risk to put safety plans in place, as Kitty (Women's Aid) experienced:

“Women's Aid got on straight away to make sure he couldn't come back to the house because the fear was that if he came back to the house I would end up giving in to him and I didn't want that, I didn't want him in the house anymore.”

## *(ii) Community Support Project*

The community support project engaged in this research has a limited online presence and largely operates by word-of-mouth and referral from other agencies. It is perhaps not completely reflective of the norm, as all of their support workers are qualified IDAAs. Emily, the manager, explained their role:

“Our IDAAs have extensive experience of supporting women to court during criminal proceedings. However, our project is unique in that we support our clients longer

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<sup>144</sup> Further information is available from their website at: <http://womensaid.scot/> Accessed: 17/08/18.

term. This has also allowed us to build up extensive experience of supporting women through civil court proceedings, particularly around contact with children.”

Its focus on long-term support in various therapeutic and rehabilitative ways is unique to court-support services, most of which are not funded to provide support beyond a final court decision. Its creative, adaptive and committed response provides untold, often immeasurable support, which is not easily articulated. Christine told me how she was referred to the community support project:

“I met a friend at the shops, and my eyes were sunk and I was like that (holds up one finger) and she said Jeez, you look terrible. I told her it was a bit of a domestic, whatever, and she said I had a terrible ordeal and I went to a place, I know it’s difficult, but just do it, nobody knows you, just chap the door and ask for Emily, tell her I sent you.”

It is this unequivocal acceptance, which cuts through the bureaucracy, targets and political constraints of other more formal agencies which makes community support projects distinct. This breadth and adaptiveness also come with a recognition of the limitations of size, which harnesses openness to working with others. This may, in part, be due to its distance from the stakeholder engagement, institutional advocacy and campaigning roles evident in ASSIST and Women’s Aid.

### *(iii) ASSIST*

ASSIST is in a unique position because it was founded to support the pilot specialist domestic abuse court in Glasgow and is largely Scottish Government funded.<sup>145</sup> The pilot court was set up with a specific aim of reducing the *risk* of offending behaviour, before risk was formalised into a parallel process (Reid Howie, 2007). ASSIST provides court-linked advocacy support by telephone to victims referred by Police Scotland. Based on an initial

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<sup>145</sup> Glasgow Community and Safety Services received £1,050,000 from SG Violence Against Women and Girls Funding 2016-17 for ASSIST services: <https://beta.gov.scot/publications/equality-funding-2016-17-violence-women-and-girls-fund/> Accessed: 30/06/18. It also receives funding from Police Scotland, due to their co-location.

discussion with clients, which focuses on consent to share information, initial safety planning, an explanation of the first court hearing and completion of a risk assessment, workers prepare a report for court. The report provides information on risk and their client's attitude to the relationship and bail. For example, it will narrate whether the victim and accused are still in a relationship. Whilst this will be considered by the court, the motion for bail, and any additional protective conditions, is made by the prosecutor in the public interest, and the final decision is made by the sheriff. In practice, if a prosecutor is not opposing a motion for bail, they are likely to seek special protective conditions. The ASSIST report is a useful tool and the provision of information to the court has been found to be helpful (Robinson, 2006a; Reid Howie, 2007). However, it is only available in pockets, as explored in chapter three, and there has been no further examination of this aspect to the role, since the initial evaluations of the pilot court. The information provided has changed, following the advent of the risk assessment tool. Moreover, at its inception, ASSIST ensured a court presence at each hearing. As the remit of the domestic abuse court has expanded and it has grown to cover a wider area, this has become increasingly untenable. In Glasgow, advocacy workers attend the procedural court, where decisions are made on preparation for trial, and the same person will try to provide support to vulnerable clients waiting to give evidence at trial. They are no longer present in the custody court, which is the first calling of the case. Outwith Glasgow, the lack of specialist courts means that the advocates do not always know which courtroom their cases are calling in and the barriers to providing court support are greater. The implications of these changes are explored below.

Police Scotland ought to offer all victims of domestic abuse a referral to ASSIST, if the report comes from within ASSIST's area.<sup>146</sup> Acceptance of an ASSIST referral ought to be flagged to the prosecutor in the police report, but that is dependent on strong police awareness of ASSIST, something Martha (ASSIST) raised:

“We used to go around shift changes and tell them what we did, so new officers maybe don't have ASSIST at the front of their head the same.”

Megan (ASSIST) also felt that some officers muddled ASSIST and Women's Aid:

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<sup>146</sup> Support clients whose (ex)partners are appearing in the Sheriff Court at: Glasgow; Paisley; Hamilton; Lanark; Dumbarton; Ayr and Kilmarnock.

“I’ve had a few conversations recently where police officers in court have seen how much I’ve been liaising with the Fiscal and they ask, what is it youse actually do? We’ve always told people you’re like Women’s Aid. And I’m like, No!”

The strength of both organisations lies in their different functions; for ASSIST police referrals are pivotal. On receipt of a referral, they provide phone support (on efficacy of phone-service, see Robinson, 2017b) and are not resourced to provide face-to-face support, although they attend court in some instances. First contact with clients is within twenty-four hours of a report being made to police, when they will complete their intake form which includes consent to share data, obtain information for court and complete a risk indicator checklist (RIC). The RIC score prioritises their level of service input, with ‘low risk’ clients being deemed ‘court only’ whereby an advocacy worker will make contact prior to each scheduled court appearance. Those deemed ‘high risk’ are case managed and referred to MARAC, which is discussed below. The crisis intervention model of advocacy for court-support organisations, such as ASSIST and EDAACs, means that whilst support is available in preparation for court, it ends with the disposal of the case. As Megan (ASSIST) observed: “What does that even mean? Where does it begin and stop?” Thus, ironically, having been encouraged to take a retrospective, reactive look for the assessment of risk and the giving of evidence, at the end of the court case there is no forum to reconsider the trauma of that process and its impact. Often, as Hannah voiced, this means that women never have an opportunity to talk about their court experience:

“You get better by talking about it and understanding and if this (interview) hadn’t happened today, I probably would never have acknowledged for another while the fact that I’ve no talked about the court.”

The importance of post-court support has been highlighted (Brooks and Burman, 2017) and was raised by Liz:

“There’s not enough support out there for it. When the case is over, case closed, you’re on your own, deal with it...There’s no, what’s the word, extension of your care after your case is done.”

### 5.1.3 Why Advocacy

Regardless of the nature of the abuse, their relationship or their route to reporting, women valued advocacy support as one person to listen to them, believe them and provide support. Joyce told me:

“I was overwhelmed with the support I got. If I didn’t have ASSIST and Women’s Aid, I wouldn’t have had a clue what to do, how to deal with anything. I would have been a lot worse off.”

Being overwhelmed by the justice process was a common theme. Laura told me: “It’s exhausting. You’re just exhausted in every way.” Thus, the value of advocacy in the immediate aftermath is to help de-mystify the system and provide emotional support.

One participant received support late in the process. Her early experience highlights the barriers, confusion and anxiety of navigating this maze with almost no support. Hannah attended group sessions at Women’s Aid. She was offered refuge, but chose to pay for her own tenancy, moving with her children to an area where she knew no-one. She spoke candidly, but not morosely, about her loneliness throughout the process: “there was much more support on offer to me here than I really took.” The fact that she was not ready to accept this support appears to have prevented her from fully engaging and accessing practical help with the criminal justice process.

She attended the police station a number of times before galvanising herself to give a statement, which constituted immense personal investment:

“So mentally you have to prepare yourself for when you’re ready for that, and I think I was in and out the police station in five hours and I had thirteen years and obviously I know they don’t want the full story, they don’t want all the ins and outs, but my experience ae it, I went in clueless, I had nae idea and I believed when I went in there to give my statement that somebody would bring me back at a later point tae add to my statement or see if there’s anything else you remember.”

In describing the process which followed, she told me:

“I gave my statement and I left and that was in September and then nuthin’ until July when they brought him in for questioning.”



Her ex-partner was charged, and a trial was set for January; sixteen months after she had given her statement. Two days prior to trial, she received a call from the Procurator Fiscal's office, during which she was asked questions about her relationship with her ex-partner. Questions which Hannah admits she was "in no way able to answer at that point properly." The following day – the eve of the trial – she received a further call from a different member of staff in the Procurator Fiscal's office telling her, with no explanation, that she was no longer required to give evidence. She subsequently found out that a plea of guilty to breach of the peace and not guilty to two assaults was accepted. He was admonished. Hannah told me:

"You presume you've got a prosecutor for me, you know, you've got this person and they're gonnae be going and fighting, what to you is everything...naebody gave me the chance to say they kind of things, even just to that one person that was supposed to be doing this job for me."

Hannah's experience highlights several issues: the magnitude of reporting to the police in the first instance; the inordinate sixteen month wait for court; the lack of communication; and the lack of consultation or involvement in the decision-making process. Of these, waiting is dealt with in chapter six and the focus here is on the reality of making initial contact with the police and the ensuing lack of communication.

There are examples in Hannah's experience where advocacy could have helped to make the process more understandable. However, some barriers, such as the length of time she waited and how difficult it is to report to the police in the first instance, go beyond the remit of the advocate. Nevertheless, when this support is available, especially support that shows a multi-agency response, it can make a real difference to women's resolve, as Keziah's experience showed. She made a disclosure to her daughter's head teacher, through concern about her daughter:

"I actually had a Women's Aid solicitor and someone from Women's Aid come out to see me at my daughter's school and they contacted the police...It wasn't forced on me, but it was put to me sort of now or never and I think that's the best way it should have been because it didn't give me time to think and the police arrested him so it was safe for me and my daughter to go back home."

At this early stage of reporting, Keziah was fortunate in the response of the head teacher and the subsequent support from Women's Aid, which she articulates as being helpful in talking to the police about the abuse that she had "actually been putting up with for 23 years."

The role of the Women's Aid solicitor is unusual. She has been employed by the Citizen's Advice Bureau since 2014<sup>147</sup> to provide legal advice to women and children accessing Women's Aid. The role is a pilot, and it was envisaged that the advice would be predominantly in relation to civil proceedings, including scope for interdicts; child welfare and legal separation. However, Keziah provides an example of the solicitor providing support with the legal implications of reporting abuse to the police. This raises interesting points about the efficacy of legal advice and representation for victims (Raitt, 2010; 2013), which is worthy of further research and examination. Hannah and Keziah's experiences show both the beneficial and the limiting factors of advocacy, which are now explored.

#### 5.1.4 Reporting to the Police: the First Response

Hannah, and the other women I interviewed, underscored the enormity of phoning the police. For the responding officers, the volume of reported cases and the emergency nature of many calls mean that domestic abuse is front-line, first response policing. The first officer to speak to a victim of domestic abuse may have had some initial awareness training, but will not be a specialist. This necessarily places limitations on the initial police response, in terms of the emotional needs and expectations of victims. These limitations, how they are addressed and the enduring gaps, are examined.

##### (i) *Limitations of the Initial Police and Advocacy Response*

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<sup>147</sup> Funded as part of the Domestic Abuse Transitions Advice Project, which was set up in Forth Valley following a 5 year grant of Big Lottery funding. For further information about the role, see: <https://www.cas.org.uk/vacancies/domestic-abuse-transitions-advice-worker-data-project-stirling-district-citizens-advice> Accessed: 12/09/18.

It is recognised that women are at increased risk when they attempt to leave an abusive relationship (Stark, 2007: 115; Monckton-Smith et al., 2014: 71). Eilidh was aware that there is also heightened risk in reporting:

“You just terrorise women further, because the belief is, and it’s a correctly held belief, he’s only going to be angrier because you’ve reported him, that is correct. He’s not going to become, you know, more appeased. It’s a risk factor, reporting is a risk factor.”

This risk was not just Eilidh’s perception as a victim with fear of reprisals. It was also recognised by Libby (Women’s Aid) in her experience of supporting clients:

“She’s the person addressing her safety fears. For all the rest of us who are trying to put things in place for her, it’s that woman who is in that position who is the real person who knows what’s going to make her safe and it might be that reporting to the police on that day is going to make her more unsafe because that abusive person still has access to her physically.”

Thus, it is important that police officers recognise their responsibility at the point a disclosure is first made.<sup>148</sup> Megan walked into a police station, by herself, not sure if she was going to report:

“I was like, I’m just looking for some telephone numbers and the officer said, who’s done this to you? And I was crying and he was like, look, I’m going to get a female officer to come and speak to you, take a wee seat, so I waited. I waited maybe fifteen minutes, still no-one had come to speak to me, the snow was bad, I knew my mind was starting to play tricks on me, so I just ran.”

The officer who spoke to Megan was clearly sympathetic and recognised some of what had happened to her, but between the initial empathic response and the decision to leave her waiting in a public area of a busy police office on a Saturday night, an opportunity was lost. Megan drove to her friend’s house, where she said: “my friend took it out of my hands,” and called the police. She was told that she was at risk of being murdered and urged to report: “I remember that sticking in my head.” It is difficult to calculate how many others have run from police stations and returned to the abusive relationship.

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<sup>148</sup> This is arguably a responsibility of all potential first disclosure agencies, including social workers, midwives, hospital staff, GPs and housing officers. For example, see: McFeely (2016) on health visitor response.

The risk of reporting is that they will not be believed, will not be heard and that reporting is, in itself, a commitment of trust in the police that signifies a significant hurdle. Hannah explained:

“The police should recognise, with training, that it’s hard for you to talk about it the first time, that it’s not a single incident, it’s completely different, therefore you can’t possibly recall it all the first time, you’ve never met these people before.”

There is a disconnect between professionals evidencing criminality in line with legislation, protocols and guidelines, and women living in a state of fear, apprehension and anxiety, taking the tentative step to make a phone call, which is a leap of faith to share intimate details of love and betrayal. Women are making complex safety assessments internally before answering questions. Megan explained why she was not truthful with police officers:

“They were saying, has he got kids, we need to know for child protection procedures. But that’s a whole other realm talking about kids, his ex-partner finding out what he’s done to me and I was just like, he does not see his kids. I lied at that point because I just thought, I can’t cope with this, I can’t deal with that.”

Scotland is fortunate in its specialist domestic abuse policing, but it is the officers first on the scene who initially respond to reports of domestic abuse and are required to recognise the dynamic of abuse. This highlights the need for a sensitive and appropriate police investigation from the outset (Brooks and Burman, 2017: 219). Evidence suggests that an early advocacy intervention complements an empathetic police response (McMillan, 2015: 637), which corresponds with the findings of the Rape Crisis Service National Advocacy Project (Brooks-Hay et al., 2018), which followed on from the S2R pilot (Brooks and Burman, 2017). As previously highlighted, the remit of this project was in relation to sexual offences, and parallels with policing of domestic abuse are limited. However, the profound impact of secondary victimisation in reporting intimate and traumatic experiences to the police is echoed by the women I interviewed. Janie (ASSIST) spoke about the benefits of advocacy in minimising this and the efforts they make to provide such support to re-victimised clients:

“If a woman has spoken to the police at length and perhaps there’s another incident or perhaps there’s historical abuse that she wants to report, she does not want to start at the beginning again with different officers. The police are very good at trying to get the same officers to see that client.”

For Eilidh, further re-offending by the perpetrator following the initial police report and ASSIST referral meant that she was supported by ASSIST when she re-reported:

“Lucy from ASSIST was very helpful. She was very knowledgeable and at one point she even phoned the police because the police were not taking statements from me for breaches of bail and stalking.”

Lucy benefited from advocacy support in later reports to police, but only at the cost of repeat victimisation and re-offending by the perpetrator. For some agencies (not ASSIST), there is an opportunity to accompany women to the police station at the outset, if she seeks support prior to reporting. Emily (Community Support Project) explained their practice of supporting women to go to the police:

“Somebody came here yesterday and brought a whole host of texts and letters and really worrying stuff, it was kind of out of the blue but for me, it was so serious, drop whatever you’re doing and we go. And now she’s reported to the police.”

Current data augments evaluation of S2R, in relation to reporting sexual offences, which has highlighted the benefits of advocacy support to make an *initial* report to police (Brooks and Burman, 2017). Current domestic abuse advocacy services do not receive a referral until *after* the initial police report, and thus miss an opportunity to improve victims’ experience of procedural justice by failing to support women at an earlier stage to report to the police. The timing of the offer of advocacy, the limited availability of advocacy services, and the barriers faced by other third sector organisations are some of the enduring gaps for victims of domestic abuse reporting criminality.

(ii) *Enduring Gaps*

The gaps in service provision vary between agencies and across areas. ASSIST provides both individual and institutional advocacy, but is not funded to support all categories of cases (see below). Women's Aid groups will support all women, regardless of circumstances, but are more reticent to advocate the benefits of the criminal justice response. The community support project is limited in scope by size and funds: it provides individual advocacy in all cases, but will refer to ASSIST for court support, where appropriate. Its institutional advocacy role in terms of engagement with policy stakeholders is limited by its size, but it mirrors ASSIST's adoption of a dual-function institutional advocacy and acts as a proponent of the value of the criminal justice response. In some parts of the country, only Women's Aid is available and whilst they will support women emotionally to attend court, they do not have a recognised role within the process and information-sharing is more limited.

Bertha (Women's Aid) told me about her professional experience of providing support within a refuge:

“This is not like some statistic, but based on my experience, I would say that 90% of the women that I work with aren't interested in going to the police. They just don't want the hassle; they don't want it dragging on forever. They just want to put it behind them and they know it will be another year of worry if they go down the route of phoning the police.”

There are numerous explanations for this observation, the most obvious of which is that if a woman has fled to the sanctity of refuge, the immediate risk posed by her (ex)partner is reduced and the pressing need for law enforcement diminishes. However, it also points to the institutional approach to advocacy. Agencies are aware, as Jean (ASSIST) pointed out, that:

“They make a phone call to the police because they're in crisis and distress in their relationship and then, all of a sudden, this whole process starts to roll and it's unstoppable really.”

The attitude of the support worker towards reporting is, therefore, likely to align with the organisational stance on pro-arrest and pro-prosecution policies. In this, agencies differ. ASSIST, created specifically to support the court process, has a strong institutional advocacy ethos, which includes promoting the rationale for these presumptive policies to victims, as Jean explained:

“So, we’re having to explain to people how important it is for the Scottish Government to address the issue of domestic abuse in the wider context of society. People don’t get that, when it’s their individual circumstances.”

Women’s Aid, on the other hand, may, as Eleanor (Women’s Aid) pointed out, have “seen some big changes in their organisational structure” and be “more strategic” in their partnership working, but Libby (Women’s Aid) reminds us that they remain a “consent based organisation” where the focus is on women’s choices. She was not convinced that reporting would be a likely choice: “Reporting to the police, will it actually improve immediate safety?” Bess (Women’s Aid) accompanied one client to give a statement. The early advocacy support should, on current evidence, have helped, but Bess observed:

“ I was there when she gave her statement. I don’t know how to describe it, it was almost as if they didn’t believe her. I tried to say to them, do you understand domestic abuse and the impact of domestic abuse, you know. It was actually a female officer.”

Even with advocacy support, women still believe, as Libby points out, that “no-one will believe me.” Given Bess’ observation, this seems a risk. Awareness of such risk has undoubtedly contributed to the organisational scepticism in the current justice response. Advocating the institutional benefits of the criminal justice response is unlikely until organisations are satisfied that a woman’s testimony will be believed and her safety needs met.

As ASSIST expands and whilst funding is constrained, there are limits to the categories of cases it can support. Currently, it is not funded to support: those whose (ex)partners are appearing on petition;<sup>149</sup> cases marked ‘no crime’ by the police;<sup>150</sup> and those cases marked ‘no proceedings’ by the prosecutor.<sup>151</sup> One of my participants referred to “a service in crisis.” These are potentially some of the most vulnerable women, as they are either

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<sup>149</sup> Since petition cases represent the most serious offending (cases before a sheriff and jury or in the high court), making this is an omission which has been repeatedly observed, since ASSIST’s inception (Robinson, 2006a).

<sup>150</sup> Cases where the police decide that there is not enough evidence to report a crime.

<sup>151</sup> Cases where police submit a report to the Procurator Fiscal and the case is then marked “no proceedings” on the basis of insufficient evidence.

reporting the most serious levels of offending (petition cases) or the lack of further proceedings precludes them from protective bail measures. They may be signposted to Women's Aid or another support organisation, but there will not be anyone able to provide them with an understanding of the court process. ASSIST has also implemented a two-tiered approach, where those deemed 'high risk' are case managed carefully with regular advocacy support; yet those deemed medium or low risk are only contacted prior to and post court hearings. Despite the relatively low proportion of cases proceeding to trial, it remains a focal point of the process, both in their phone support and their presence in the court building. In terms of court, the first calling of the case may be when women are particularly vulnerable, as Megan explained:

“When he's appeared in court, I knew someone would phone me and tell me what's happened. I was so terrified that I got in my car and drove about with the doors locked and I ended up sitting in a carpark, waiting for the call and I don't think it came until after five o'clock and he was remanded.”

This shows the implications of focusing support on the punctuation marks in the process. Megan and the other participants in this research engaged in the court process, but the cost of such engagement and the level of reluctance and retraction must be borne in mind (Robinson and Cook, 2006). Advocacy support should be available from the earliest encounter with the justice response, as focusing support on the trial arguably denies many the opportunity to engage with the process. It must be recognised, reflecting on the narrative in chapter three, that this is not an individual agency prioritisation, but borne out of wider policy in relation to the criminal justice response.

## 5.2 Perception and Professional Judgement: The Risk Assessment

Part two analyses the impact of the introduction of risk assessments on domestic abuse advocacy services; how risk is measured and its influence on victims' experiences of court. Thus, this section explores: the risk assessment; how it works in practice and how assessments are made; the ways in which risk scores are shared for the MARAC and the limitations of this; and the influence of the risk assessment on victim advocacy services.



### 5.2.1 The Risk Assessment

The RIC asks 24 questions designed to illicit information relating to key risk factors affecting women's safety and the likelihood of re-victimisation, including: the presence of children; use of a weapon; previous 'incidents'; sexual violence; and cruelty to pets. Without a national victim advocacy service, there is a lack of uniformity in the application of the risk assessments. The apparent paradox is that the risk assessment is designed to identify and manage high risk victims, yet is recognised by the victim advocates often to be inappropriate for those most acutely at risk. The data provides evidence of professional judgement overriding both the decision to carry out the RIC and to revise the RIC score and refer to the MARAC, where there is minimisation and a professional concern. Jean (ASSIST) explained: "if we had a low RIC score, my professional judgement might be that this is scored low because the person is minimising the abuse." This is consistent with the limited existing research available, which points to IDVAs and IDAAs relying on information beyond the risk assessment tool and their own professional judgement (Robinson and Howarth, 2012) and the fundamental inability of such a tool to deliver "anything more than a hypothesis" (Mythen and Walklate, 2011: 103). As observed by Martha: "risk is fluid." Jean agreed that: "we cannae predict his behaviour" and Chloe summed up that: "it's an excellent tool, but it's not the be-all-and-end-all."

Qualified IDAAs will use the RIC on first meeting or speaking to a victim of domestic abuse. Other support workers may use the tool, where they perceive a high risk during their discussions with a victim. The subsequent introduction of the DAQ as a risk assessment for use by Police Scotland in 2012, means that in areas with an advocacy service, such as Glasgow, a victim may be asked to complete the RIC *and* the DAQ within 24 hours of reporting abuse. For others, if the first response officer does not complete the DAQ, the risk assessment may be missed completely. Initial evaluation of the risk assessment tool within the context of this multi-agency response concluded that one organisation should be responsible for assessing risk (Robinson, 2004), and this was endorsed by the Scottish Government in its toolkit (Connelly, 2008).

The risk assessment is designed to explore a victim's *perception* of her own risk, privileging subjective, rather than objective appreciations of risk. The risk rhetoric lends weight to individual perceptions of risk (Robinson and Rowlands, 2009) as tangible, relatable and valid. For the advocacy workers I interviewed, the probing nature of the RIC and the measured perception of risk cumulatively provided a conduit for a woman's voice to be heard. Whilst they acknowledged the subjectivity of a victim's perception of risk, there was no reflection on their own potential biases,<sup>152</sup> as Janie (ASSIST) explains:

“The risk assessment is *her perception* of risk. It's not our perception. I may have a client who completes the risk assessment and it's a 5 and my perception of her risk could be 24.”

This may be attributed to a tendency to minimise a reluctance to disclose information *at this stage*, or a differential between a woman's risk factors and the risk factors identified in the questionnaire. In such instances, advocacy workers advised that they may review the scoring and apply their professional judgement to revise her score and refer to the MARAC.

In isolation, it is a blunt tool. 24 questions starting with: “Are you frightened?” and going on to ask questions about every intimate aspect of a victim's life. This includes potentially traumatic recall of violence, abuse and sexual assault, which may never have previously been divulged, and it is not surprising that many women, who have just reported and are speaking to someone on the phone for the first time, choose not to disclose.

Minimisation on the part of the victim, or what Adams (1991) christens our “risk thermostat” whereby we each have an internal regulator to normalise and deal with particular risks, is common. In long-term coercive control, there is a strong likelihood of victims' thermostats being recalibrated at a much higher level than average and a true appreciation of their own risk, providing an inaccurate picture of their objective risk (Herman, 2001: 168). Stark (2007: 216) describes a struggle between ‘agency’ and ‘victimisation’ beyond the end of the relationship, which may reflect how they perceive risk.<sup>153</sup>

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<sup>152</sup> These may be significant in light of their disclosed lived experiences.

<sup>153</sup> For a discussion of agency and victimisation, see chapter seven.

The routinisation of exposure to risk – or abuse – no matter how horrific, also impacts on perception. Combat soldiers are trained to be ‘tactically aware’ rather than ‘hypervigilant’(Castro et al., 2006). Safety planning operates on a similar rationale: that a risk acknowledged is a risk diminished. This is based on the knowledge that daily or regular occurrences are more like to be perceived as low risk, compared to high impact, rarer occurrences, like terrorist attacks (Royal Society research 1992, quoted in Garland, 2008). Further, living with an escalation in abuse will lead to women’s risk ‘thermostat’ being higher. Jenn highlighted this escalation:

“there was very little physical violence for the best part of a year and I obviously, stupidly, bought that as: everything’s fine...I’m having a baby. And it wasn’t until maybe (sighs) the September after Bertie was born that it started again...It was harrowing: it was the beginning of what then turned out to be a proper kind of nasty spike, a big nasty spike towards the end.”

Laura also spoke of the internal safety assessment and the emotional rollercoaster of dealing with that:

“It really is trauma, you just don’t know what’s happening. I read something, I think it was at Women’s Aid that compared it to like terrorism and it really is like that, you just don’t know when something’s going to explode, you just tiptoe all the time.”

This nexus between the perception of risk and the trauma experienced by a woman is key and contradictory to the actuarial calculation on which the RIC was designed, but fortunately recognised by some of the workers I spoke to.

Janie (ASSIST) explains:

“This is about her perception: this is about fear, this is about her too scared to tell people what’s going on so she’ll deny what’s happening or she’ll minimise what’s happening...We can challenge her gently, and say, based on this, just in my experience, I’m puzzled as to why he’s become so violent like this now...You know, we have to make them feel secure, we have to make them feel we have an understanding of what they’re going through.”

It also means that there will be occasions when conducting the risk assessment during the first conversation is inappropriate. For Megan (ASSIST), there was a recognition that on occasion, the emotional repercussions for a victim means that there will be times when conducting the risk assessment during the first conversation is inappropriate:

“I was so concerned for this woman that I couldn’t even go anywhere near a risk assessment with her, ehm, and we’re very driven by that.”

This was echoed by Emily (Community Support Project), who gave an anonymised example of one client whom she believed may have been a victim of undisclosed sexual abuse, something that would be covered directly by a question in the RIC, but she judged that it was the wrong time to explore it:

“I felt that there was a sexual element that had never been explored. The reason I didn’t pursue it...I think she was just so busy surviving that she wasn’t thinking why clothes had been ripped off.”

Qualification and experience amongst risk practitioners varies (Robinson and Howarth, 2012: 1511), which has consequences for the application of professional discretion in over-riding a victim’s perceived risk. As explored in chapter two, the efficacy of discretion lies in its predictability (Hutton, 1999; Hawkins, 2002: 428), the transparency of the decision-making and the respected professionalism of those making the decision (Hawkins, 2002: 428 et seq.). The implications for victim advocates in applying discretion is explored below.

### 5.2.2 Risk Assessment in Practice: Who is the Expert?

Beyond the principle of conducting a risk assessment, concerns were also raised about its practical application, particularly which organisation was best-placed to judge risk and whether or not that information was shared. The risk assessment has the potential to be an aide-memoire or helpful structure in exploring issues with a victim in a nuanced, collaborative and sensitive way to intuitively judge primary safety concerns. It also has the potential to be inexpertly and insensitively applied. Translations of numerical scores are

inherently unreliable, as different practitioners filter and prioritise different factors (Robinson and Howarth, 2016). For example, many workers raised concern about police assessing risk. Jean (ASSIST) was aware of research showing that the score is consistently lower when a police officer conducts the risk assessment, compared to an IDAA asking the same questions (Robinson et al. 2016; Ariza et al., 2016).

Emily (Community Support Project) voiced similar concern about the ability of police officers to use the tool appropriately:

“my concern is that it is not reflected in a risk assessment unless those officers actually decide that it’s a risk. And it depends on the officers. But, even training does not address that. It’s deep-rooted attitudes to what it’s ok for a man, when the relationship has just ended, it’s what your expectation is of his behaviour and if you think it’s alright that he’s going to harass her. It does not matter what tools you use, that’s not going to change how the case is handled.”

For others, including Jean (ASSIST), it was the repetition when they asked the same questions within twenty-four hours:

“it’s like somebody having to repeat their story over and over. They’ve already told the police this. If we had those answers, we would say ‘when you spoke to the police you said this...’ It would help if someone said he killed my rabbit that we’re not saying, has he ever been cruel to animals. Well, yeah, I told the police that he killed my rabbit. D’you know?”

From a victim’s point of view, the same probing, potentially triggering and possibly insensitive questions are being asked twice, by two different organisations with different purposes. Reflecting on this makes it fairly obvious why women do not feel listened to: repeating the same information and being asked potentially insensitive questions is arguably almost as disempowering as not being given an opportunity to speak at all. It is also difficult to persuade victims that a coordinated community response is being adopted for their benefit when this basic information sharing fails.

Evidence suggests that police officers are not always adequately trained in conducting the risk assessment or clear of its purpose (Ariza et al., 2016) and that the ‘scientization’ (Ericson and Haggerty, 1997) of domestic abuse has not diluted police discretion (Barlow and Walklate, 2018) or accorded a more consistent understanding of the dynamics (Myhill and Johnson, 2016). Whilst these findings relate to England and Wales, as front-line officers respond to domestic abuse calls initially, Scotland cannot afford to be complacent.

To great extent, the observation that women are the experts in their own lives continues to resonate (Arnott, 1990: 79) for IDAAs, even when conducting a risk assessment and their professional judgement is applied. Their sensitive and nuanced approach is clearly a product of both their motivation for this area of work and their training. The ways in which IDAAs permit women to retain expertise and augment their own agency are explored in chapter seven.

### 5.2.3 Sharing Risk Assessment Information: Taking it to the MARAC

The rationale of the risk assessment was set out in chapter three. In a climate of resource constraint, it facilitates prioritisation. Based on research on domestic homicides (Monkton-Smith et al., 2014), it is designed to identify risk factors in individual lives, which in turn helps to identify those victims most at risk and in need of referral to a multi-agency conference. Police, IDAAs, prosecutors, social work and health are all usually represented at the MARAC. Any agency can refer a case, but the majority of referrals tend to be from the police (Brooks-Hay, 2018), although, Eleanor (Women’s Aid) observed that: “*Sometimes* Fiscals go to MARACs and I think it would be useful if they went.” The focus is on individual safety planning and evaluation of the MARAC has provided evidence of positive outcomes for victim safety (Robinson and Tregidga, 2007). More recent focus on perpetrator management and concerns of a compromise on victim-safety were dampened by recent research underscoring the continued value of the MARAC, within the context of a holistic approach to tackling domestic abuse (Davies and Biddles, 2017).

All of the agencies around the table understand the risk assessment and how scores are reached. However, reducing individuals to a number may potentially jeopardise the rationale of the agencies trying to help. The uneven introduction of risk assessment tools and MARACs, shows that different agencies carry responsibility for the risk assessment in different parts of the country and, in some areas, there is overlap. It showed that the risk rhetoric has been adopted by police officers, criminal justice practitioners and third sector organisations tackling domestic abuse as a recognised mode of inter-agency communication on harm prevention and safety planning. To assess the efficacy of the risk assessment, it is important to understand how the scoring translates in the MARAC. Eleanor (Women's Aid) told me about the operation of the MARAC in her area:

“I think the MARAC in principle works very well, the difficulty has been getting good representation from other agencies, it's been very challenging with social services, but in principle, I think it's good.”

Whilst she broadly favoured the MARAC, her reasons didn't relate to more effective safety planning in individual cases. Rather, she described it as beneficial for improved inter-agency relationships:

“We are doing them [MARACs] monthly, but I think we could do them every two weeks because very often the IDAA has been doing her job and we've done everything by the time we get to the MARAC, so in some cases, it's just almost informing people that this has been done.”

As well as identifying that MARACs would benefit from being more regular, which was a finding of earlier evaluation (Robinson, 2004: 31), she also recognised their benefit for prevention, when she observed that: “we start to see patterns we hadn't seen before” which, in turn, assists: “a really good link between the MARAC and the MATAC.”

Reflecting on these observations, two things become apparent. First, the MARAC discussion goes beyond the RIC score and relies on partner organisations sharing information in a meaningful way. Without such sharing, it is difficult to envisage how patterns could be identified or successful outcomes narrated. Second, a significant benefit of the MARAC does not relate to individual cases, but rather the wider picture of inter-agency relationships and

longer-term prevention strategies. As such, whilst an understanding of risk is important, the value of a RIC score is hard to quantify. It is also clear that information-sharing is crucial.

Further, from the interviews conducted for this research, corporate responses vary between organisations and sharing of the RIC score is inconsistent. Police Scotland will sometimes share the score with the prosecutor and other parties to the MARAC, but they will not share the detailed results with ASSIST. However, ASSIST will share their RIC result with community agencies, where they make an onward referral for face-to-face, therapeutic support, as Emily from the community support project explained:

“if ASSIST have done it [the RIC], I’ll phone them and they’ll give me it and I don’t need to do it. I will not revisit it twice.”

This may be attributed to the fact that one of their lead support workers was previously an advocate for ASSIST during its pilot, which has fostered close trust between the two organisations. Their ethos may differ, but there was evidence of high referral rates inter-agency, so that ASSIST clients could access long-term therapeutic support after court, but also a small, modestly resourced project was able to signpost to ASSIST for court support and case-specific information, even if an IDAA from the community project supports them in attendance at court hearings. There was an understanding of the service provision at ASSIST and their information-sharing infrastructure. This illustrates the influence and importance of personal relationships in fostering multi-agency working between organisations.

Women’s Aid adopt a different multi-agency approach. Eleanor, who attends the MARAC as a partner, not as an IDAA, welcomed the cementing of relationships through the MARAC as:

“really quite helpful in terms of how we work together and how we recognise what others can do for us. It’s more routine now.”

However, this does not extend to sharing the RIC. In fact, Libby, a Women’s Aid worker, questions the benefit when asked about sharing:

“No, we are a consent based organisation and that is our underlying premise...In terms of their safety [the woman] they have to be in charge of that. You know, we don’t take that out of their hands, in terms of sharing an actual risk it’s not really



necessarily helpful...you talk about themes that are presenting, but we wouldn't share an actual paper document."

Despite this assertion of a specific ethos, she also told me that: "ASSIST is a good referral agent, obviously they're providing that specialist support." For Jean (ASSIST) the difficulty in sharing was practical: "Some Women's Aid groups don't have secure emails."

Such anomalies in the extent to which information is shared endorses the findings in other research, which suggest that further evaluation of the MARAC is required (Steel et al. 2011). Early evaluation of the MARAC (Robinson, 2004), highlighted information-sharing as the key driver to success (2004: 15), which is not consistently in evidence here. Recalling the innovative nature of MARAC meetings and the opportunity they provide to have an overview of vulnerability in the community, two observations can be made: first, the intrinsic value of the MARAC in managing women's safety; second, the unrecognised, wider benefit of having an overview of risk and offending.

In its simplest form, the MARAC is a public recognition of the daily risks faced by women with an abusive partner and the dangers faced by their children. Key statutory and third-sector agencies taking the time to prioritise a woman's safety in a round-table discussion is positive. MARAC preparation may be onerous on agencies (Robinson, 2004; Cordis Bright Consulting, 2011), but the simplicity of the model is the essence of the adaptive nature of safety planning or what Martha called "finding creative solutions." When agencies hide behind RIC scores, lapse into rehearsed phrases or fail to attend, the information-sharing at the heart of a successful MARAC is lost.

The benefit of the MARAC in improving wider understanding of the dynamics of domestic abuse was touched on by Robinson (2004: 31), but has been largely undocumented since. With the advent of the 2018 Act, there is a stronger argument to harness this aspect of the MARAC. An overview of patterns of victimisation, spikes in specific sorts of risk and agency pressure points, could be very helpful. However, this should not compromise the focus on managing the safety of individuals. Thus, continued monitoring ensures attendance of key agencies and MARAC provision nationally. Whilst in Scotland this is overseen by a

national coordinator,<sup>154</sup> there have been calls in England and Wales to further scope placing the MARAC on a statutory footing (Cordis Bright Consulting, 2011).

#### 5.2.4 The RIC as a Tool for Managerialism

The RIC has also been infiltrated by a new administrative atmosphere, disclosed by Janie:

“It can also be a useful tool when we’re supporting women over a period of a year or two. Her initial risk assessment might be eighteen and when we’re looking to close her file...her risk assessment goes down from an eighteen to perhaps a five. So then we are accountable and we are able to say that we managed to lessen that woman’s risk, based on her perception. She feels better then.”

Employing the RIC as a mode of agency accountability may be viable if it were an actuarial tool with consistent application, but perception of risk is highly subjective, with cause and effect almost impossible to pinpoint. There is a compound risk value, encompassing the victim’s perception of risk and the worker’s perception. It is thus concerning that it is presented internally (for agency monitoring) and externally (for court purposes) as a certain, specific unit of measurement, which is revisited below.

However, its benefit as a semi-structure in a chaotic narrative was highlighted by Chloe (ASSIST):

“I think you get the most information out of the risk assessment because a lot of women are very much all over the place, so it may be the first time they’ve ever talked about anything, so you need something, the structure to kind of assess where they’re at, because sometimes you can talk to a woman for an hour but she’s not really told you anything.”

And its capacity to lend legitimacy, when victims do not recognise the harms they have experienced is explained by Libby (ASSIST):

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<sup>154</sup> This is currently the responsibility of the MARAC coordinator in Scotland – see appendix one and chapter three.

“It gives women permission to speak about things that they’ve experienced that they may not have spoken about before.”

It is within this landscape that application of the risk questionnaire must be considered. Not only is the timing of the RIC sensitive, but also the specific, fixed and prescriptive nature of the questions means that the initial discussion between an IDAA and a victim will inevitably be incident-focused. The lack of scope for free narrative and storytelling means that reflecting the continuum of violence and abuse, recognition of which advocates strive to achieve, is potentially being thwarted in this initial interaction, which prioritises what the RIC deems important factors, rather than what she is choosing to tell. The rationale for the introduction of the RIC; the appreciated benefits by the workers using it; and the unintended, but now predictable, longer term effects for victims are distinct and contradictory. Not only does this affect policy development, it impacts on individual victims, as the established role of the victim advocate becomes confused with the ‘IDAA’, the role of the police and the purpose of the MARAC (Ariza et al, 2016: 245). This becomes increasingly complex when the victim advocate role and status in court are considered.

### 5.3 Prosecutorial Discretion, Advocacy and Judicial Judgement: Risk Assessments in Court

So far, the chapter has examined the role of the advocacy worker from the initial police call, through MARAC referral and inter-agency safety planning. This final part focuses on the court process – procedural hearings and trial – to highlight the tensions between the advocacy function of articulating victims’ voices in court and the function of assessing risk. The risk assessment was not developed as a tool for information provision in court, but, anecdotally, I have observed that it is routinely used as such. Within the ASSIST area, the risk score features on its court report. Elsewhere, the police ought to provide information in the standard police report to the prosecutor about the relationship and the assessed level of risk. There has been no empirical examination of the weight attached to this information by the prosecutor marking the case; the PF depute in court; or the sheriff presiding over the case, if the information is provided by the PF depute. It is unclear if the information is available consistently in all courts and, where it is available, the extent to which it is relied upon. This

potentially jeopardises longer-term trust in the tool and further highlights the need for clarity around its purpose and research on its scientific basis (Ariza et al., 2016). Furthermore, the intrinsic link between the risk assessment and victim advocacy (Robinson and Payton, 2016) means that the way in which advocates have tentatively built trust within the existing court structure is also precarious. There are effectively three professional filters at play: the IDAA or police officer conducting the assessment; the prosecutor marking and presenting the case; and the sheriff adjudicating. The impact of the risk assessment as a tool for court is thus unclear and unpredictable.

In areas with a tailored advocacy project, IDAAs prepare court reports for prosecutors based on the results of the risk assessment. The victim will be described as ‘high, low or medium risk’: a beneficial short-hand immediately understood by prosecutors trained in legal precedent and statutory rules who are comfortable with the risk vocabulary. Where the police have carried out a DAQ, they may provide a risk descriptor within the initial police report.<sup>155</sup>

Thus, risk information is increasingly available at the first calling of the case in preparation for a hearing on bail. Ongoing contact between the victim and the IDAA means, in theory, that the information is updated ahead of each calling of the case. The issue of bail potentially occurs at various diets,<sup>156</sup> and the level of risk has evolved as a relevant factor in consideration of sentence and the potential for a non-harassment order. The generation of this risk data has led to an expectation that it will be available. Consequently, pressure mounts on victim advocates to obtain information timeously for court. This is not always realistic, as Megan (ASSIST) pointed out:

“The police are not giving us referrals in time for the custody court, sometimes we’re getting them a day, two days after, weeks after it’s gone through the custody court....”

If referrals are not made on time, information from the victim is lost at the stage when bail is decided. Variation of bail conditions can only be made when there is a material change of

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<sup>155</sup> Anecdotal observation as a prosecutor is that the police will only sometimes provide risk information. There is no available data on the application of the DAQ.

<sup>156</sup> The rules pertaining to an application for bail are contained within the Criminal Procedure (Scotland) Act 1995, s22A-33.

circumstances.<sup>157</sup> The preparation of a court report, for the PF depute is cited by participants as a key part of the ASSIST process. Yet Martha (ASSIST) told me:

“I don’t really speak to Fiscals that often, to be honest. I think I’ve probably spoken to a Fiscal twice in four years.”

There may be a strong relationship between ASSIST management and policy prosecutors, but without meaningful communication at staff-level, the ability to advocate for the victim in court, through the conduit of the prosecutor, is lost. Jean (ASSIST) told me: “I’d like to think that we could do more work on building up those relationships.” Moreover, the ASSIST report ought to be a safe way of sharing the victim’s view of bail with the court. However, if the paper information is not available at court, or the information is not clear, victims may be approached directly. Janie (ASSIST) raised concerns about this:

“If the sheriff wants us to go and talk to a woman who may be in court, we’ll go and speak to her and come back and relay how that woman is feeling. I often wonder if it’s the right environment, the fact that she’s going to say she’s not frightened, this was a one-off, she wants him back home. There’s no real way of directing the sheriff that you have concerns that this woman is being coerced.”

Meaningful communication is the nub of womens’ voices being safely heard within the court process. It further points to the benefits of advocacy workers being present in court, which is increasingly difficult within funding constraints, highlighted in chapter three and borne out by the workers’ experience. Janie (ASSIST) observed:

“If we had more resources, we would be able to go and do more face to face work with women and there could be more of us over at court. There’s often times you should be sitting in 1A [procedural court] listening to what’s going on, but there’s a woman in court 15 [trial court] having a panic attack and refusing to give evidence and the Procurator Fiscal’s wanting you to go and talk to her, so you’re torn between where you should be.”

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<sup>157</sup> Criminal Procedure (Scotland) Act 1995, s30.

Surprisingly, Martha has worked for ASSIST for four years, yet has never been to court. Chloe (ASSIST) also felt that there were missed opportunities to engage with clients at court:

“I personally think that we should have kept going to the custody court because there are a lot more clients will attend the custody stage.”

This was echoed by Megan (ASSIST):

“For the last two years ASSIST does not go to the custody court and for me, that’s really critical, particularly when someone pleads guilty...but these women just find out that he’s gone through the custody court and whatever he’s got and there’s no follow up or feedback...So, we’ve been lost from that custody process.”

Certainly, being approached at court when unsupported can be not only distressing, but arguably inappropriate and a compromise on women’s safety, as Laura explained:

“...and then my name was called out, there was a woman there, I cannot tell you if she was a solicitor or a lawyer, a Procurator Fiscal, I don’t know who she was and she said, he’s plead guilty, what is it you want to happen? I was kind of like, I don’t know what to say because I want him punished but I don’t want the responsibility for anything that happens as far as punishment is concerned because it’ll come back on me.”

This underscores a key obstacle for victim advocates: there is little value in them explaining the court process and key personnel, if those court actors don’t subsequently take time to introduce themselves and individual roles remain elusive to the victim.

Sheriffs are attuned to reading reports on levels of risk in relation to bail and sentencing (McNeill et al., 2009), but references to victims’ risk appear to be less common.<sup>158</sup> The risk assessment conducted to test a victim’s risk of exposure to further domestic abuse is a complex, evolving measurement that cannot yet be properly deemed to be within judicial knowledge.

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<sup>158</sup> This is anecdotal, based on court observation.

If safety is women's primary concern, then protecting safety through assessment of their risk of further harm seems unimpeachable. However, research has exposed the greater hazard of invoking a false sense of security in the certainty of measurement tools and calls for more robust empirical data on risk (Burton, 2008; Myhill, and Johnson, 2016). In relation to sentencing, McNeill et al.'s (2009: 435) ethnographic study of the impact of criminal justice social work reports found that judges remained mistrustful of risk assessment instruments and the social workers' professional judgement in assessing the risk. The authors attribute this to the judges' collective lack of confidence in their own professional discretion, which is unsurprising when they rail against overly prescriptive political direction which compromises their governance (Simon, 2007). In an interesting application of Bourdieu's *habitus*, they attribute this attitude to the judges' social superiority within the courtroom and that:

“Those who are ‘in their right place’ in the social world can abandon or entrust themselves more, and more completely, to their dispositions than those who occupy awkward positions, such as the parvenus and the declasses.” (2009: 435)

In McNeill et al.'s (2009) offender-framed analysis, the social workers are doubly blighted by being relatively new to the criminal justice process and lacking in status. Their findings should not be misinterpreted as suggesting that the risk-based reports prepared by social workers are disregarded by the court; rather they suggest that there is a ‘governmentality’ say/do gap in the rhetoric of risk-assessment and the weight attributed to it. Whilst it may be taken into account in sentencing, other factors will contribute to the sheriff's final decision, his own professional judgement, rather than the social worker's, at the forefront, as (s)he owns the final decision on risk in his/her court. Arguably, lessons can be learned for advocacy workers as even newer ‘parvenus’ to the court process. Chloe (ASSIST) recognised that, as a victim advocate, “we have no control” and need to manage expectations that: “it's just the information we put into court is her voice in court, that's all it is, a voice in court. It does not mean to say that what she wants will happen.” Martha (ASSIST) also recognised the limitations of the advocacy worker:

“It seems like unrealistic expectations of what we can actually put into the court. Ehm, because people want you to tell the court everything about the past.”

Managing women's expectations was balanced with a need to professionalise and temper their language for court, as Jean (ASSIST) explained:

“I think we've got more in tune with the information that we're putting across to court, I don't know if professional is the right word.”

The prevailing culture within our criminal courts will thus inform judicial interpretations of risk, arguably heightening the importance of an institutional advocacy role, as Jean highlighted in her experience of one sheriff dismissing the ASSIST report:

“He basically said the ASSIST report is anodyne, out of date and unhelpful. So I had to come back and say to my manager that it looks really bad if you're sitting in court and you've got that information, but the sheriff does not want to hear it...so that all got changed about and sheriffs now ask what is ASSIST saying, but we don't know if that's happening in other courts.”

This illustrates that if victim advocates are going to successfully persuade judges consistently of their long-term value, a deeper understanding of their role is required (Hannah-Moffat, 2012). This was endorsed by Libby (Women's Aid):

“I think the ideals within it [the risk assessment] are really sound. However, I think there is still a need to be more robust in terms of transferring those sound ideals onto the non-domestic abuse specialist frontline staff, like sheriffs.”

Institutional advocacy has developed as workers try to promote their professional expertise, training and the seeming rationality of the risk assessment to greatest effect. Shepard and Pence (1999) describe institutional advocacy as “macrolevel and microlevel” in advocating improvements in legislation and local practice (1999: 12). Within the Duluth model, this translates as harnessing a coordinated community response within which victims can engage (1999: 13). The *quid pro quo* is that formal criminal justice agencies expect mutual cooperation from third sector agencies to advocate the benefits of the institutional justice response (Robinson, 2006a: 40), which is, for example, mirrored in ASSIST's approach. The complication of fulfilling such an institutional advocacy role whilst maintaining deep interpersonal relationships as an independent IDAA is problematic, but not insurmountable. It highlights the difficulties of agencies not having a shared understanding of advocacy, specifically institutional advocacy. Both roles have the potential to impact on the court



process and the wider justice response to domestic abuse, but such a two-dimensional model of the IDAA and the institutional advocate fails to recognise the valued role of the grassroots support worker, which is entwined in their response. Any shared definition needs to recognise the empathic human response, which does not sit neatly in categories of support and advocacy. It is asserted that such support is not compromised by the compound understanding of institutional advocacy, which recognises the importance of improving service provision for victims and encouraging engagement of victims in that process. It embodies the Duluth coordinated, community response. With the exception of a notable few (Robinson and Howarth, 2012), research focus has been on offenders, and there has been little reflection of the development of the role and the complex connection between the IDAA, the assessment of risk, therapeutic support and the wider victim-advocate champion. Many participants in this research, despite their own trauma, wanted to help others and supported institutional advocacy, endorsing SWA's ethos of women-helping-women-helping-women. Joyce told me:

“Women out there need a better service, women that are getting battered up and down the place and too scared to speak up.”

Even Hannah, who did not receive the support available, said:

“I've decided to try and take steps to become more involved, to make a difference. Maybe by the time my girl is all grown up things will have started to be fairer and society will be more aware.”

The relationship between the advocacy worker and the risk assessment has resulted in many positive affirmations for the risk assessment in the current data, which were, in reality, simply endorsements of the advocacy role. The lack of consistency with which the risk assessment is applied leads to different prosecutors and courts having different available information. Further, a lack of research in Scotland means that little is known about the application of discretionary professional judgment in assessing risk, and little is understood about the weight attached to the outcome by prosecutors and judges. Improved communication and a closer working relationship with prosecutors are more likely to harness respect in court than mitigating advocates' expertise through use of a quasi-scientific tool. Specific research is needed on how the risk assessment information is used in prosecutorial and judicial decision-making.

## 5.4 Conclusion: The 'Risk' of Victim-Blaming and the Risk to Advocacy

“I was caught between a rock and a hard place and they were both threatening me.”

(Eilidh)

The women I interviewed unequivocally welcome the advent of victim advocates, an enthusiasm mirrored in similar qualitative research (Hester and Westmarland, 2005; Brooks and Burman, 2017). Victim advocates provide unparalleled support for women through their person-centred, committed ethos. Many have experienced abuse themselves, all are trained in the dynamics of abuse and are touched by the women they are trying to help.

We have seen that the risk narrative seems appealing to victim advocates for many reasons. However, the risk rhetoric has introduced an assessment tool which, if used too prescriptively, threatens to constrain them and compromise their expertise.

Specialist IDAA training has already enhanced support workers professional standing within the justice community and their authority within the court process, which helps to promote women's voices within the process. It is only by contemplating the risk assessment within the wider domestic abuse literature and the temporal analysis of its position within the public policy timeline, that true perspective is possible. The third sector organisations undertaking IDAA training and carrying out risk assessments are predominantly women's support agencies, tackling domestic abuse as a gendered problem and grounded in a feminist standpoint (see chapter three). Understanding the driving force – and struggles – of these organisations and the development of their feminist ideology over time allow us to reconceptualise the risk assessment as an opportunity for validation of their role within the court process: the 'devenus' have arrived.

Assessing women's perception of their own risk is grounded in an understanding that women are experts in their own lives and the most accurate judges of their own safety (Arnott, 1990: 79). Evidence of minimisation by victims of domestic abuse compromises the validity of this

assertion and creates space for advocates' professional judgement. The introduction of the IDAA qualification may be a more appropriate vehicle for professional respect than a numerical RIC score. The risk rhetoric has arguably compromised recognition of these expertise. The enduring lack of voice felt by victims is explored in chapter seven and shows the crucial part victim advocates play in facilitating agency, but highlights the enduring tension between facilitating such agency and over-riding victim's perception of their own risk. Further work is needed to recognise their professional expertise within the court process, improve inter-agency communication beyond the MARAC and provide even service provision. This chapter has shown the strength of the victim advocate role, not only in supporting victims to navigate the process but also in advocating to the formal institutions, through nuanced and respectful communication with the court and a working relationship with the prosecutor.

The following chapter explores the victim's journey through the court process. A temporal analysis helps to understand why challenges prevail for domestic abuse victims, despite advocacy support. In this, we see the enduring stereotypes of the reasonable man and the hysterical female. A potential benefit of talking in professionalised, actuarial terms about risk is its potential to provide a quiet, legitimate challenge to the old 'moral discourse' (Garland, 2003). Risk, whilst intrinsically linked to society's emotional response to a shifting morality and unstable environment, is steeped in the language of the rational and the predictable.

## Chapter 6: Competing Chronologies, Victims' Experiences of Time

### 6.0 Preamble

In the same way that domestic abuse is not all about hitting, justice is not all about the trial. Justice, like the lived experiences of the women I interviewed, is a process: it is a flawed narrative, punctuated by stutters and hic-ups. It is sometimes predictable, often dramatic and always emotional for victims of personal abuse and those professionals seeking to support them (Bosworth and Kellezi, 2017). For victims too, perceptions of what amounts to justice are subjectively colourful and varied; described by McGlynn et al. (2017) as “kaleidoscopic.”

In chapter three, I examined the policy and legislative changes affecting victims of crime in general and victims of domestic abuse in particular. I presented a timeline of Scotland's response to domestic abuse as an analytical tool to explore the genesis of key moments in a recognisable chronology. This chapter explores victims' personal experiences of journeying through the justice process and how those experiences might be reconciled or better understood within the context of what has been learned about the institutional and policy timeframe. The aim is to examine the extent to which law and policy changes help women going through the court process, improve their safety and provide them with a voice.

Familiar concerns about court attendance, distress and re-victimisation (Burman, 2009; Brindley and Burman, 2011; McGlynn et al., 2016; Brooks and Burman, 2017) are considered from a distinct perspective. Despite the programme of legislative reform, prosecutorial training and police prioritisation evident in chapter three, the criminal justice response does not yet adequately address the needs of women attending court, at a time of potential, acute vulnerability. Thus, consideration is given to whether meeting those needs is achievable and some assumptions about emotion within criminal justice, reasonableness and re-victimisation are reconfigured.

A temporal analysis of women's experiences of the criminal justice process situates their narratives from that first phone call to the police to the final court outcome within a specific

understanding of: emotion, waiting, and framing. These themes, grounded in my interviews, structure this chapter.

Weisstub (1986: 191) describes the subject of victims of crime as “fraught with emotion and polemics.” It is precisely this association between victims and emotions that paints victims as unpredictable and potentially irrational, compounding the “uncomfortable ‘other’ about them” (Rock, 2011: 40) and hampering an empathic response. Their role as witnesses links them intrinsically to the trial and cements symbolic “images of submissiveness, pain, loss of control and defeat” (2011:41). Thus, focusing on the trial as a single event, rather than examining the whole process, misses an opportunity for a person-centred approach, which provides validity to different emotional responses and tailors the justice response accordingly. This has implications for training and case preparation, as well as court. There is legal precedent, in the test of reasonableness, to take such a person-centred approach, and this is explored.

The women I interviewed experienced a range of responses throughout their interaction with the justice process. They expressed: resolve, expectation, grief, sadness, confusion, frustration, hope and hopelessness, pride, and disappointment, sometimes all at the same time. Their waiting was not contained to the day of the trial. They waited *for* court and *at* court. In many instances, their waiting extended beyond the trial to outcome and sentence, and some were still awaiting the ramifications of the end of a non-harassment order. Of the non-harassment order, Elaine said: “...because I’ve not seen a result yet, I’m still living it.”

Christine explained the reality:

“And I have absolutely no doubt in my mind when my three-year non-harassment order is up...that that bastard will be sitting at my front gate every single day.”

Relating policy developments to women’s experiences, it can be seen that not only do individual *realities* of time differ, their subjective emphasis, or *perception* of time also differs. This is consistently overlooked and is important because a re-framing of criminal justice is needed; one which introduces narratives of human experience into the court and

develops a socio-legal understanding of victims' (and accuseds'<sup>159</sup>) perceptions of time during the criminal justice process.

Such a re-framing of the justice process in domestic abuse cases is arguably predicated on closer integration of the criminal and civil justice responses, whereby a holistic approach to justice minimises conflicting timelines. A model of coordination and communication is distinct from a blurring or merging of two systems, examples of which can be seen in criminal sanctions for breach of civil orders<sup>160</sup> and whose efficacy is a separate discussion point. A model of closer integration is explored within the context of women's narratives which highlight the damaging impact of two potentially concurrent and conflicting court processes offering differing levels of procedural justice, and how that is reflected in their experiences.

### 6.1 Victims' Timeline – Dealing with Emotions

Women who have experienced significant, prolonged abuse of a coercive and controlling nature within an intimate partner relationship, may suffer complex post-traumatic stress disorder (Herman, 2001: 121; Ellison and Munro, 2017) after leaving. The emotional and psychological impact of abusive relationships has been widely narrated (Pizzey, 1974; Dobash and Dobash, 1979; 1984; Westmarland, 2017), but broadly generalised. Medicalising the psychological effects of abuse may be tantamount to making women 'problematic' within the courtroom (Bumiller, 2008: 33; Walklate, 2016) and contribute, albeit inadvertently, to victim-blaming (Walklate, 2011) or to an expectation that women will display certain signs of trauma and respond in a certain way (Bumiller, 2008: 33).

The depth and range of emotional responses to abuse may be recognised in sociological and psychological literature, but the criminal justice process is not yet equipped to deal with them. Emotions within the justice process conjure up images of weeping women in the witness box, yet such an over-simplification fails to recognise what women are dealing with

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<sup>159</sup> Accused persons' experiences of time pre-trial/outcome is beyond the scope of this research. For a discussion of offenders' experiences of time in prison see, for example, Armstrong (2015).

<sup>160</sup> For example: Protection from Harassment Act 1997, s9.

at every stage. Keziah spoke of four adjournments, before finally being told that the case could not proceed, but with no explanation. She told me:

“Any time, it wasn’t very clear as to why it was put back. I had to phone the Fiscal’s office to find out what happened at court that day, but it was the next day I had to phone back, they’d need to look it up, it was just a lack of information.”

She went on to describe how she felt about the build-up and let-down;

“I was stressed and worried and making myself sick about going to court and then to be told it’s not happening on this day and when it came to the last one, they said, this will be it, building myself up to that and then told I wasn’t needed. That was it.”

The feeling of unanswered questions and lack of resolution resonated with a number of my participants, whose case did not proceed to trial and they did not get the opportunity to speak. Ayesha felt so ignored after the conclusion of the case against her ex-husband that she “cried and I’m kind of helpless and I kind of begged, but I was told, that’s it, it’s done. Now live with it.” Hannah told me: “I know why the Procurator Fiscal didn’t phone me back, after what had happened, it would have been hard to phone me.” For both Ayesha and Hannah, not only was their emotional need unmet by simply taking time to provide them with an explanation, the failure to respond to them arguably compounded their emotional trauma. Thus, it is not only in the courtroom, but also in the wider justice process that an empathic response is important.

Furthermore, ignoring emotion until the trial not only propagates idealisms of victims, it heightens the tension unnecessarily. There are numerous opportunities throughout the process for more meaningful interaction, which could usefully dissipate some of the tension of the trial. Jenn described going to see a solicitor for the first time, three days after the police were called:

“It’s like Thursday and I had washed my hair by this point, which may have been the first time since all this had gone a bit mental, but I’d forgotten to blow-dry it, I didn’t have any make-up on and I hadn’t remembered to pack any clothes for myself, so I

was wearing this weird Victorian shirt that belonged to my brother and my mum's coat, so I looked like Beethoven, so I walked in and I was like: hello."

For Jenn, it was not only her behind-closed-doors relationship which had been disclosed by reporting to the police but also her private self, with no make-up and un-brushed hair. In describing herself to me, she was conscious of how she must have looked in a solicitor's office. She told me how this vulnerability translated at court:

"I was terrified of how I was actually going to be portrayed, of how the evidence was actually going to be, why would anyone have taken my word for any of it, I was genuinely, he's so smart, he's so manipulative."

In this sweat of anxiety ahead of court, Jenn was fortunate in the way her solicitor responded to her vulnerability, so that by the date of the trial, she knew that, "he believes me and he knows better than you and you just think you're dead smart." A less empathic initial response from the solicitor could have fed, rather than reduced, her anxiety, which has repercussions for how she presents in court. This underscores the impact of individual empathy throughout the justice process on the trial. Jenn's prediction that the court could easily be persuaded by her "manipulative" and seemingly reasonable ex-partner, in the face of her self-doubt and anxiety highlights the juxtaposition of emotion and reason. She describes herself at the trial as "really scrawny and sickly...I just felt so small." Eilidh echoes Jordan's description of an experience that is "savage and gruelling" (2004: 53) and encapsulates this superficial requirement for vulnerability, yet calm required of women to be believed:

"I was painted so badly. His last line: no-one dares abuse you, you're very strong, you're a highly intelligent woman, you've come here today, you've answered everything, you've batted it back to me, as if anyone would dare to domestically abuse you, no man would dare to take you on. That's what he said, then he sat down."

Eilidh's professional role within the courtroom and her knowledge of the defence solicitor created compound barriers. A call for greater empathy within the courtroom is unlikely to be embraced without some persuasion. Any argument must be framed within recognised legal doctrine. The 'reasonable man' test is embedded in the jurisprudence of Scots law (Gordon,



1959) and has evolved (Gordon, 1959: 277), within recent statutes, into a more general test of ‘reasonableness.’<sup>161</sup> This is paradoxically problematic and opportunistic for efforts to re-frame justice to deal with domestic abuse more appropriately. *Prima facie*, a patriarchal system which considers the actions of a ‘reasonable man’ in a determination of guilt presents an unhelpful rhetoric and culture in which to introduce a more nuanced understanding of the trauma implications of gendered abuse. It potentially reinforces the ‘reasonable’ man and the ‘emotional’ woman (Weisstub, 1986). In some parts of the US, the reasonable man has been accompanied by a reasonable woman in a bid to recognise a ‘gender conscious’ examination of the facts and circumstances (Agostino, 2017: 343). Proponents of the reasonable woman suggest that it is a legitimate way of allowing emotional responses validity in the courtroom (2017: 346 quoting Leslie Kerns, 2001). However, the ethical and practical implications of the reasonable man and the reasonable woman were highlighted by Agostino (2017) as failing to recognise the complex relationship between sex and gender and the harmful stereotypes they promote (2017: 346).<sup>162</sup>

The reasonable person, however, is not unproblematic. (S)he has been framed for a criminal justice system created within patriarchal structures to respond to public wrongs. Changing the name has done little to inform responses, as the structure is “coded as male” (Beard, 2017). The reasonable person, it is mooted, is not equipped to recognise the responses of women to intimate gender abuse as ‘reasonable’ and is particularly problematic for victims of coercive control (Stark, 2007).

The 2018 Act includes a defence of ‘reasonableness’ against a charge of a course of abusive behaviour towards a partner or ex-partner.<sup>163</sup> Thus, it is a defence to the charge if the accused can show that, in all of the circumstances, the course of behaviour was ‘reasonable.’<sup>164</sup> *Reasonable* is not defined and will be interpreted by the court. Configuring gender stereotypes within this dichotomy, it is clear how such a defence may be routinely successful in allegations of coercive control, a crime which, by definition, relies on evidence of an

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<sup>161</sup> For example, Sexual Offences (Scotland) Act 2009, s16 for defence of ‘reasonable belief.’

<sup>162</sup> This is a timely warning as the Scottish Government consults on proposals to simplify the Gender Recognition Act 2004.

<sup>163</sup> s1.

<sup>164</sup> s6.

accused acting in a controlling manner, capable of ‘seeming’ reasonable (for a commentary of the test of reasonable belief of consent in sexual offences, see Rook and Ward, 2016: 1.283). Here the inherently private nature of domestic abuse and the framing of reasonableness to relate to public behaviours generate friction. The defence of reasonableness perpetuates the public/private dichotomy and allows coercively controlling behaviour to continue. By focusing within the courtroom on the perpetrator being reasonable, an opportunity is created for the very behaviours which the Act seeks to criminalise to continue openly, yet unrecognised – public, yet private – within the court process. As Fitz-Gibbon and McCulloch (2018: 123) observe: “The courtroom is an adversarial rather than therapeutic or clinical setting” (see also Bandes, 2009, on the tension between rationality and emotion in the courtroom). The supremacy of the perpetrator’s voice is something evidenced in the data and explored further in chapter eight, to navigate the public/private dichotomy and the timing of control. Yet, this ability to appear ‘reasonable’ to the police and in the courtroom as part of the scheme of an ongoing course of coercive conduct is also evidenced in the interview data and examined here: the more his reasonableness is tested, the more unreasonable she seems. This can lead to women feeling disbelieved at a systemic level, which might be understood as institutional disbelief.

Eilidh told me about her attempts to report her ex-partner for breach of bail conditions. An officer came to her house to take a statement:

“He was the one who told me I was talking mince and he didn’t want to be doing this and ‘your estranged husband is a nice guy, he just wants to see the kids, you’re the trouble’.”

The negative implications of an emotional response are encapsulated by Eilidh when she tried to tell her family what she had experienced:

“They couldn’t connect to this hysterical woman, they’re like: (sighs) he’s a great guy, be quiet, you’re the one that’s a pest, you’re the one that’s crying and making all the noise. When I calmed down (pauses) I was able to be heard, which is really bizarre. It shouldn’t, it should be the other way around, you should be heard as the distressed victim but you’re not. And in court, I failed because I got agitated and that didn’t work for me, whereas he was very calm. He always is. He’s frighteningly calm.”

This resonates with Christie's (1986: 20) observation that noise does not create good victims and "needs to be muffled." Despite this realisation, the pressure of cross-examination in court compromised her ability to remain calm:

"There were a few times I had to take a minute. I got very distressed, but probably came across as quite angry under cross-examination continually being called a liar."

As she repeatedly told me:

"He's so plausible. He was never going to be convicted."

It is perhaps unsurprising that this is the court response when there is a similar, wider, societal culture. Christine told me: "that's not the perception he gave of himself out with the family" and admitted that when she left him: "I think they [friends and family] thought it was me that was a bit nuts."

However, there is arguably doctrine within Scots law to challenge this. The reasonableness test is a test to establish the *mens rea* of a crime. The Crown must prove not only that a crime was committed and the accused committed it, but also that he *intended* to commit it. In *Cawthorne v H.M.A.*,<sup>165</sup> Lord Avonside provides jury direction on this:

"It is impossible, ladies and gentlemen, to look into the mind of a man, and when, therefore, you are seeking to evaluate the effect of the evidence in regard to the nature and purposes of an act, you can only do so by drawing an inference from what that man did in the background of all the facts of the case which you accept as proved."

The premise of the burden of proof is that an insight into each accused's subjective response is neither possible nor desirable. Each case is considered individually, and assumptions are not made. Thus, it must be possible to inform an understanding of trauma and responses to victimhood, not by inviting a subjective analysis of emotions in each case, but by leading evidence of the background facts surrounding the alleged offence, the circumstances of the victim leading up to and at the time of the offence and the impact upon her. Wider guidance on the meaning of 'reasonable' within the context of specific types of offending could provide challenge to a defence of reasonableness and apparently 'plausible' accused in cases of coercive control. However, it is also clear from Eilidh's words that she was not deemed

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<sup>165</sup> 1968 J.C. 32.

‘credible and reliable’ (for an explanation of the test applied to a witness’ credibility and reliability, see: Ross and Chalmers, 2015: 1.6.3) by the sheriff. This raises critical questions about how emotions are managed within court and how to address the unpredictable disparity in which voices are heard – and believed – in evidence (Davies, 2012; Fitz-Gibbon and Maher, 2015 generally and: Ontiveros, 1995 for a discussion of the implications of this in the OJ Simpson trial; Cowan et al., 2017 on reconfiguring Scottish decisions from a feminist perspective; Hunter, 2012 on the Canadian feminist judgement project; and Fitz-Gibbon and Maher, 2015 on the Australian experience). This again raises questions of power and voice, which are developed in chapter seven.

Like Eilidh, other women I interviewed described a fragile, complex and unpredictable range of emotions, depending on the context. Grief-like reactions were accompanied by feelings of illegitimacy around such grief within the context of the abuse and fear. The loss of “the internal psychological structures of a self securely attached to others” (Herman, 2001:188) was encapsulated by Christine, who waited almost a year for a date for trial. She was assessed as ‘high risk’ at the MARAC and described living in fear of her ex-partner: “Will it [court] take the fear away? Absolutely not, I live with that every single day.”

Yet, when the citation for court arrived eleven months after she had reported, she said:

“We got the trial date through in December which was leading up to the first Christmas without him, which was pure crap because I was dreading the first Christmas without him there for the girls’ sake and for mine because it was the weirdest feeling ever after twenty three years together.”

Scheff (2011: 279) explains the possibility of simultaneous love and hate, by defining love thus:

“My definition of romantic love contains three components. Two are physical: sexual attraction and attachment. One is cognitive/emotional; I call it attunement (balanced mutual awareness between self and other).”

Understanding attachment as a key component to love is helpful in reconciling some of the conflicting emotional responses to domestic abuse (Dutton, 2004), compounded where

children are affected (Hester et al., 2000). Scheff's analysis contextualises Christine's response and situates the complex reactions of grief, loss, fear and anger. Laura's daughter was cited to give evidence at the trial against her father. After waiting, she was not called as he pled guilty. She explained her daughter's emotional struggle:

"She said, so that's it? I don't get to tell my story. And I said, no. And she said, because I think somebody, and this is what she said, I think somebody needs to know just how bad he is and then maybe, because it's my dad and I do love him, but I don't want to see him."

Christine also struggled to provide an explanation of the abuse to one of her two daughters:

"and Maisie was breaking her heart crying, but why did dad hit you? I don't understand...and then I'm still making excuses and I'm thinking what am I doing?"

With such immense pressure, it becomes easier to understand why she wrote to the Procurator Fiscal asking for proceedings to be 'dropped':

"There's a girl I went to school with who's semi-vegetable now, eh, fae the last head injury she got from her partner, and she'll take him back and keep taking him back and that would have been me if Rosie [daughter] hadn't phoned the police and the police hadn't took it forward. Cos I would have stopped that bus at any point, I put the letter into the Fiscal's office trying to get him off, I changed my statement, you know, that would have been me (*really quiet*) I would have just kept going til I was the toe-tag on the mortuary slab."

Epstein (1999: 78) sums this up by referring to the adage *Why does not she leave?* as rhetoric which "assumes a false black-and-white model of human relationships." This is also reflected in a broader societal view of the perpetrator. Christine's daughter Rosie thus teaches us that it is possible for the victim to be seen as 'ideal' and recognition of the 'wrong' – as an act or a course of conduct – without making a broader moral judgement on the perpetrator. This is important in the context of the justice response, where challenges arise from those concerned with the erosion of an accused's procedural rights (Crawford and Goodey, 2000; and Hoyano, 2015). It is also valuable to challenge pre-conceived notions of fixed identities within the process, a challenge which has been rehearsed in the wider court setting (Garland: 2001), but tends to be elusive in the domestic abuse trial where the fiction

of a ‘halo’ victim and ‘devil’ accused endures (Simon, 2007: 77). Such a cast list invites a ‘remote’ prosecutor and a ‘tyrannical’ judge, thus reinforcing impediments to an emotionally intuitive justice response which recognises the complexity of private intimate relationships within publicly recognised criminality.

In sum, it is necessary to better understand the varied responses of the research participants at different stages of the court process. Their stories show that internal (emotional) and external (court) factors affected their experience. Mapping these experiences alongside the seemingly inflexible criminal justice process provides an opportunity for a reconceptualisation of ways to improve the justice response.

## 6.2 Waiting as Tertiary Victimisation

Overwhelmingly, women are expected to wait. They wait for a safe opportunity to report, or worse, until crisis point. While waiting for court resolution, women are waiting for bruises to heal; decisions on housing; referrals for emotional support; reports from schools and bar reporters; contact from his family; civil court resolutions; and (marked) time to pass.

Waiting *for* court and waiting *at* court are spatially and temporally distinct. Court is a regulated space in which not only the waiting, but the manner of waiting, is controlled (Foster, 2016: 13). This exercise of power over the individual presents an additional barrier to women who are attempting to escape the trauma of a coercively controlling relationship. Waiting is a structural inevitability of the court system (Gasparini, 1995: 41).

Nevertheless, the failure of court practitioners to recognise the challenging power/control dynamic affecting women’s ability to wait, evident from the data extracts below, suggests that they have superimposed common experiences of waiting as a mere inconvenience. Specialist training for police officers, prosecutors and judges on *what* the dynamic of domestic abuse looks like, falls short of *how* those experiences of domestic abuse impact upon women coming to court and *why* they might behave in certain ways. Thus, an

understanding of the impact of waiting and an attempt towards ‘temporal co-ordination’ contribute greatly to a more emotionally intuitive efficiency. The secondary victimisation of recalling traumatic events by giving a statement to the police or giving evidence in court is recognised (Burman, 2009; Kelly et al., 2005). However, the traumatic effect of *waiting* for victims of an abuse which intrinsically relies on manipulation of power and subordination of personhood is unexamined. The data from this research overwhelmingly points to these periods of ‘traumatic’ waiting as a form of re-victimisation. It is, however, distinct from previously recognised forms of re-victimisation. Experiences of traumatisation through re-exposure and recall of distressing events by talking about them is inevitable (Tulloch, 2008), but within a therapeutic context may be beneficial (Herman, 2001) and need not be re-victimising. The victimisation of waiting is distinct in its juxtaposition of banal normality and unrecognised trauma: whilst court personnel assume waiting is an inconvenience and a boring aspect of attending court as a victim, they fail to notice the anxiety experienced by many in waiting. Waiting falls between the recognised punctuation marks of the process and the way in which it is normalised causes its damaging effects to be ignored. Thus, an appropriate – even emotionally intuitive – procedural justice response has the scope to minimise the impact of re-victimisation. If a degree of secondary victimisation is considered to be inevitable within an adversarial process (and this is explored further in chapter eight), then it follows that the re-victimisation of waiting is another layer of victimisation. Thus, I suggest that it can be conceptualised as tertiary victimisation. It is necessary to explore the impact of this tertiary victimisation on the interview participants before considering, in the conclusion, its preventability.

Waiting *for* court may present greater opportunity for autonomy. Rotter’s (2017: 97) research on the asylum determination process challenges waiting as passive. She suggests:

“Even for people who have endured loss, trauma and protracted uncertainty, waiting may, under certain conditions, entail intentionality, action and potential.”

Thus, she attempts to validate the activities of asylum seekers during the determination process and assert their legitimacy within the wait. Armstrong (2015: 22) surmises: “If only we could make waiting [in prison] more useful, it would be more humane.”

Kirsty's experience highlights that what Rotter refers to as 'action' does not equate to Armstrong's utility:

"I felt like I kept phoning and asking questions and it always just felt like you were kind of asking too much...I don't know, I just felt there was so many different people I was phoning and not really getting anywhere...I felt like the onus was on me to do something, when I'd already done enough to...I mean, whose job is this? It's not mine. Ehm, does that make sense?"

Activity may, as in Kirsty's case, feel compulsory to assert some agency. For others, it can also be a frenetic 'filling of time' and an avoidance of cumulative fears (Forbes, 2010) or as Christine put it: "Scared to slow down because when I slow down it opens Pandora's Box in my head." Moreover, despite the universality of waiting (Turnbull, 2016; Foster, 2016), reactions to and implications of waiting remain personal and subjective.

The challenge to Rotter's analysis for women who have been the victim of a gendered crime is that any positivity generated during the waiting period is precarious in the shadow of further victimisation (Kelly et al., 2005; Burman, 2009; Brooks and Burman, 2017) where every punctuation mark in the wait is a reminder of trauma. Even where a court diet is not a trigger for the victim, the trigger can be initiated by the perpetrator, as Joyce (Women's Aid) explained:

"...and then there was wee things, like after any different court cases, like I say, there was umpteen of them, eh, I would maybe start getting loads of curries delivered to my front door."

Joyce explained her hesitance to report these deliveries to the police and the impact that it had on her:

"My head was burstin' all the time, I was like, I'm not phoning [the police] I know I'm going to have to go over this big story to talk about curries being delivered, but then it was part of his profile that was to scare me...But at the time, I didn't look at it like that until the police explained it to me."

Thus, within the layers of waiting – for information; for court; at court; for a result; for the abuse to be recognised and stop – women experience what Foster (2016: 14) calls a "series of



nested waits,” and their scope for agency remains precarious. There is evidence of autonomy being compromised by the wait for two forms of communication, which weave through her contained, stoic waiting, regardless of location. First, ‘his’ next move: whether or not he would breach his bail; whether or not she would be safe; and whether or not he would plead guilty. Second, there is the wait for information. So long as women are waiting for resolution of court proceedings, they do not regain complete control of their own life. This is manipulated by ex-partners who use the court process to further coercively control her time and movements by enforcing a longer wait. Liz commented that: “I think it’s unfair because I’m the victim and he still got to manipulate me when we were going [to court].” Many participants referenced defence motions to adjourn, which Eilidh recognised as “a delaying tactic.”

Recovery and marking time away from an ex-partner are intrinsically linked. For Laura, the clock could not start on her recovery time until the court process was complete. The passing of time carves distance between them and the abusive relationship and provides a sense of moving on. There is not a set structure or predictability to waiting, and the ability to move on *at their own pace*, is key. Christine encapsulates this:

“So, slowly but surely I’ve been rebuilding...I’m half dead physically but mentally I’m getting better, I can’t not get better now. The girls have got their shit sorted, I’d be a bit of a failure if I was still in Pandora’s box two years down the line. And then other people say, he moved on, why can’t you? Just move on, what’s your problem? And you’re like, you just don’t get it, years and years and years of damage.”

The way in which women mark time in the aftermath of an abusive relationship thus contextualises the impact of waiting for justice: it underscores the specific pains of their waiting, as they strive, as Jenn puts it to “keep moving forward.”

Assuming the Joint Protocol (2017) is followed and there is a report to the Procurator Fiscal in custody, the first wait is for the outcome of the initial bail hearing: to know if he has been remanded in custody or if protective conditions of bail have been granted. This is critical to safety planning. Following these initial short, tense waits, women subsequently wait for what can be – and feels like – a very long time to hear if the case is going to court and if there will

be a trial. They wait not knowing how long they are expected to wait, exactly what they are waiting for or if it will be worth the wait. The lack of understanding of the court process compounds the confusion and lengthens the wait. For Jenn, it was not the waiting, but waiting in the dark that presented a challenge:

“I don’t think the passage of time was a bad thing. I mean, it would have been nicer to have had clear parameters and clearer markers, and dates to work up to and a little less kind of, oh well, we’ve tried, we spent eight hours waiting and it’s just not worked out, so can you come back next Wednesday. Because for every day that we were in here, I had spent twenty-four hours, forty-eight hours gearing up for it, then eight hours in here and twelve hours de-briefing and you know, trying to decompress from it afterwards, only to re-emerge into society as a functioning person.”

This encapsulates the link between waiting *for* court and *at* court: it is immediately a confluence of the anticipation and realisation of their fear. Reducing the length of time for a case to come to trial may mitigate distress, but while there is a lack of information and a lack of time taken for explanations, any wait will *feel* long. Kirsty echoes the frustrations of many:

“You’re sitting there all day with the anticipation and the nerves of, I have to do this and then to be told it’s not happening. It’s very soul destroying.”

This necessitates repeat visits to court – and longer waiting time:

“Then you’re waiting around and you get told that it’s going to be twenty minutes and the PF came to speak to me and he was very pleasant and said, I’ll be doing this and this person will be doing this, but you only meet him about well, supposedly twenty minutes before going into court. Twenty minutes turned into three hours and a lunch break and it was that long wait that I found really difficult. I didn’t know it was going to take...you know once I was told it was going to be twenty minutes, I was like, ok, I can deal with twenty minutes, but what I couldn’t deal with was three and a half hours, it was quite difficult.”

Christine was physically sick going into court. Several, including Kirsty, mentioned shutting down and being unable to speak within the waiting area and Sarah admitted that she went

straight to the bathroom every time due to acute diarrhoea. Not only was waiting an anxious revisit of trauma and fruition of fears, but Chloe told me:

“The witness room was really uncomfortable. Those blue chairs. The first four times I wore my black dress and my heels, but by the fifth time I thought, sod it, I’m wearing something comfy.”

Jenn agreed: “by the third time, I was like, I’m not even buying an outfit for this!” This dwindling respect does not seem to make the waiting less anxious, nor is a focus on the tangible, physical surroundings surprising. They are dealing with these emotions and reactions at the juncture when they will potentially be called to give evidence and the prosecution will rely on the quality of that evidence. Within this context, it is unsurprising that these emotional responses impact on their ability to present as credible and reliable witnesses, or even to speak up at all. This provides further reason to respond in a more empathic way at earlier stages in the process, which recognises the impact and tension of the wait on individuals and the proceedings. Christine is a trauma nurse within a busy Accident and Emergency Department and has received specialist training to help her dissociate from the trauma to treat the presenting injury. She explains:

“But what I learned to do, somewhere along the line, was dissociate from what he was doing when he was doing it and then what’s happened is, I’ve probably taken way more shit than anybody else might have managed to take for such a long time because I was so good at dissociating.”

Focusing on the discomfort of the chairs and the impracticalities of the waiting room is a way of women dissociating from the trigger of re-traumatisation:

“When the panic, when the trigger happens, I dissociate. So, you would look at me and I would be standing doing the exact same thing, completely frozen, but inside, I’m heaving.”

Thus, women attending court may present similarly to other witnesses, but may be simultaneously enduring a complex emotional response. Nevertheless, their practical complaints – the noise level, its inappropriateness for children and the lack of privacy when discussing their case – are valid and far more easily resolved than the internal conflict. Eilidh explained some of the practical discomfort of the witness box: “It’s a real physical exertion,

you're standing too long, it's an awkward, small place to stand, your legs get sore, there's a lot of noise from the public gallery." Changing the seats is not going to resolve the real issues, but it may lend itself to creating an opportunity where, as Armstrong (2016: 20) puts it, waiting becomes more 'humane.' A lack of clarity was common to many participants, which reignites feelings of powerlessness and a lack of autonomy – that someone else retains control – and is reflected in their disengagement from proceedings and frustration that their voice has not been heard. There was an overwhelming sentiment that criminal – and civil – justice practitioners failed to take the time to listen to them and consequently that their time 'spent' was devalued (Rotter, 2016: 88). In fact, removing the physical barriers of an uncomfortable wait and minimising exposure to a trigger environment could arguably empower women to give evidence. The discomfort of the wait could be mitigated, even if the wait itself is inevitable.

Eventually, the wait may not even be worth it. Julie reflected the sentiment of many of my participants:

"I just feel as though I've been let down, it was a waste of time. That's what I feel, it was just a total waste of time, cos I don't know how many times he put a samurai sword to my chest and told me he was going to kill me. I had to leave everything. I just feel let down."

It is recognised that waiting will always be part of an institutional response. However, it is traumatic because it is long, anxious and, for many, to no avail. Re-framing the justice response to domestic abuse in a way which recognises the continuum of abuse, past and present, the intractable privacy even in a public forum, and the need for empathic responses throughout the process may mitigate the trauma of waiting.

### 6.3 Re-Framing Domestic Abuse: Recognising a Continuum of Coercive Control

Kennedy QC (1993: 263) questioned the symbolic place of women within the justice process in her polemic on why "Eve was framed." Indeed, the way women are framed within the justice system (Charles and Mackay, 2013) is as important as their personal experiences of time frames. For some, the length of time they took to seek help meant that there was no

prosecution. For others, the length of the trial resulted in the sheriff deserting the case. For most, there was frustration that a lifetime of abuse was condensed into ‘incidents’ to be negotiated and plea-bargained, the rules of evidence apparently pitted in the accused’s favour. The court’s fixation on events was a common source of frustration. Many women had clear recollections of *some* dates because of their significance: Christmas or a birthday. This may reflect the forensic, closed-question style to which they had become accustomed, following police interventions. However, there was some self-reflection and reference by one participant to a ‘spooky recollection’ of dates. Seemingly coincidental, the high correlation of domestic incidents on significant dates tells us something of the way the abuse was perpetrated. As Christine said, there were ‘trigger’ times, such as birthdays, anniversaries and Mother’s Day, so that the time at which abuse was perpetrated became a compounding factor of the abuse itself. These trigger dates show that for women and children living through the court process, their punctuation marks have far more pressing safety concerns than the punctuation marks observed by court practitioners.

Women highlighted the improbability of being able to recall specific incidents of abuse in what, for them, was a process of abuse. Court dates in the justice process tended to be recollected more clearly because many of the women I spoke to had tried to gain control of their post-relationship timeline and maintained a diary. Given the perceived lack of belief in their testimony, this effort to reliably recall dates and harness credibility is unsurprising. Yet the difficulty of recollection, translated as confusion and lack of reliability in the courtroom. This was compounded for those who had more than one criminal case running in tandem. Not only is recollection more difficult, but it becomes increasingly confusing to follow the court processes. Elaine received letters from VIA in relation to each court date, but with a number of cases ongoing, she explained: “It’s a standard letter. It’s no personal, aye, I’ve got about twenty copies of each of them. Every time he done something I’d get a barrage out. They’re helpful once, but no twenty times and sometimes they would turn up late.” There is potential for an emotional connection, even in letter-writing, and Elaine’s experience suggests that information-provision to victims misses this opportunity and may even cause further confusion, if the letter is vague or late.

Whilst the court remains resolutely date-focused and VIA's letters miss an opportunity to engage, national policing of domestic abuse, by the Task Force, has become more sophisticated in taking a holistic look at abuse. It has contributed to an increase in reporting of 'historic' domestic abuse charges. This shift in practice should mean that when women like Sarah find an impetus to seek help, a delay in reporting does not preclude a prosecution:

"Yes I made a call to the police. My husband very seldom let me do anything on my own and once the girls were in school, I said look, I'm going to the doctor's, and that's where if I'd gone back with him to get the car, I wouldn't have done anything, but I thought nope, I can't live like this and I phoned the police and that's when I told them about all the incidents that had happened. He attacked me in his mother's house on Christmas 2008 and there was no proceedings as that was too long ago."

Charges increasingly tend to be libelled: "on various occasions between x date and y date, both dates inclusive" to allow the Crown a fairly wide parameter within which to prove criminality. However, there remain limitations to the drafting of charges, and an incident focus prevails in the courtroom culture. Joyce told me that the police: "listened more, but they couldn't investigate the whole story." Elaine explains the manipulation of date-orientated questioning by the defence in court to challenge her credibility:

"The questions were date orientated and that's what the defence lawyer was targeting: dates. I already telt the P.C. that the only dates I had was the ones in previous diaries, that I got annoyed and wrote silly wee things, like he hut (sic) me and it was the 5<sup>th</sup> January say, but trying to remember when he hut (sic) me in 1998, it was hard. You cannae remember dates, there's nae way...it was a life for me, I would fight back at the beginning, but after the years and because of the children, I sterted jist to take it and keep quiet for their sakes, so you don't realise until you're oot i' the situation that every single thing that he done wasnae right, so I couldnae pin-point dates or evidence."

The provisions of the 2018 Act, which introduce the *continuing* offence of coercive control, will provide the Crown with an opportunity to:

"reflect the victim's lived experience and allow it to be recorded in its totality in black and white as a criminal complaint." (Di Rollo, Solicitor General, December 2017)

There are challenges to achieving this, whilst meeting the needs of legal certainty and fair notice (Robertson, 2016). However, not only are these provisions “seismic” (Di Rollo, 2017), but the Act also reflects a shift in attitude at the top of the prosecution. Recognition by a Law Officer that women’s narratives ought to be heard reflects the potential for the start of a cultural and attitudinal change towards re-framing women’s status in the court process and wider understanding of the way domestic abuse is perpetrated. As Kennedy (1993: 263) rightly observed:

“Women have gone through the stage where they did the adjusting; now it is time for the institutions to change. The symbol of justice may be a woman, but why settle for symbols?”

#### 6.4 Competing Chronologies: Civil and Criminal Justice

The distinction between civil and criminal justice is not recognised by the women who attend court following a phone call to the police and simultaneously seek to secure a safe child contact arrangement. The women I interviewed understood that there were two separate processes running in tandem and could – in most cases – distinguish between them.

However, the practical effect for them was attendance at court. Thus, they broadly told me about their whole court experience. In some cases, the civil case was more prominent because of the impact it had on their children’s safety. Cook et al. (2004) in their evaluation of the specialist domestic violence courts in England and Wales highlighted the need for greater links between the criminal and civil courts, citing improved information-sharing between the two as a baseline and calling for more research in this area: “if specialist courts are to maximise their potential...for victims and their children.”

The provision of special measures, broadened by the 2014 Act, was discussed in chapter three. None of the women I interviewed were aware even of the limited availability of special measures in civil procedure.<sup>166</sup> There is no funded court advocacy programme, such as ASSIST, for the civil court. Confusion and lack of understanding of the process to which

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<sup>166</sup> Vulnerable Witnesses (Scotland) Act 2004, s18. For an interpretation of who the section applies to, see s.11, as amended by the 2014 Act.

my participants had been party were evident. During civil procedure, the women shared a waiting room with their ex-partner and his family; sat opposite him, across a small table in the courtroom; and were approached by him on the way in and out of the court building. Ayesha told me: “I was waiting there and his body language was very aggressive.” Liz explained that: “he could sit right beside me for my child welfare hearing, I couldn’t do anything about it.” There is little faith in the reassurances that breaches of bail imposed by the criminal court will lead to arrest, as Joyce rationalised:

“Glasgow Sheriff Court was very very frightening. I still felt unsafe, even though I was in a safe room. He breached they bail conditions a few times and he never got put away.”

Not only is this distressing for women and undermines the value of the support available in the criminal court, it can contradict an order imposed by the criminal court. Women referenced bail conditions being in place from the criminal court that her ex-partner was not allowed to approach or contact her in any way, but she was required to attend the civil court hearing, wait outside the courtroom beside him and sit across the table from him.

As Liz explains:

“I had already had to face him taking my child to contact and I had no protection in the contact, so what was the point in putting a screen up?”

Ayesha echoed this:

“Once I’ve got screens, not to face him and then civil court, when I go, he’s sitting right in front of me. Does that make any difference? I goes, I don’t want to, he would move, I know what he does, he would cough and he would make the kind of movements that’s my heartbeat is going fast because I don’t want to face that person, I’ve lived enough and I don’t want to see his face – and you are giving screen protection so I don’t have to see him in another court and then I go regarding my daughter’s child welfare hearing and I’m sitting right in front of him. *(pause)* And he’s on bail condition.”

Effectively, for women experiencing both procedures concurrently, meaningful protection in the criminal court is rendered meaningless. Liz also expressed the view that the civil case should not go ahead until completion of the criminal case: “cos then the sheriff knows the whole truth, that this person has a criminal case.”



Others took the view that they should be heard together, to minimise the length of time involved in court processes. Eilidh's sceptical view challenged the point of reporting a criminal case where you have children. In her experience, the civil court followed the judgement of the criminal court, despite the difference in burden of proof:<sup>167</sup>

“And in some ways, it's better for women not to report these things, because if you report it and he gets a not guilty, it seems to affect your civil proceedings.”

Weisstub's comments (1986: 209) seem acutely current when he called not for integration of the civil and criminal systems, but a closer alignment:

“it is in the accommodation of each system to the other that, as legal forms, crime and tort will redress wrongs and meet human needs.”

A significant proportion of victims of domestic abuse will experience both procedures. We have seen that they are unlikely to distinguish between them. Connelly (2008) was right that closer integration would require significant legislative reform, not least in relation to the burden of proof. However, there are ways in which they might “accommodate one another.” There is also scope for the infrastructure of advocacy provision to formally provide support through both processes, to provide parity of rights and protection in both courts.

There are difficulties in adopting a policy which indefinitely delays a child welfare hearing until the conclusion of a criminal trial. A criminal prosecution before a sheriff and jury is likely to be a year after an initial appearance on petition.<sup>168</sup> The welfare of the child ought to be the paramount consideration<sup>169</sup> and delaying resolution of contact arrangements is potentially harmful and distressing. Nevertheless, a delineation of the criminal and civil court process in cases of domestic abuse is not sustainable if the current government policy and legislative framework for criminal cases are to be met. The legislative intent of the 2014 Act is not being achieved, and the civil/criminal separation is artificial for families who have experienced domestic abuse. The 2018 Act has brought this issue into the spotlight. The implications of the creation of an offence of ‘coercive control’ are examined in the next

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<sup>167</sup> The burden of proof in the criminal court is ‘beyond reasonable doubt.’ In the civil court, it is on the ‘balance of probabilities.’ On burdens of proof see Raitt, 2013.

<sup>168</sup> Time limits are set by statute. See Criminal Procedure (Scotland) Act 1995, s65.

<sup>169</sup> Children (Scotland) Act 1995, s1. On taking into account the views of the child, see s6.

chapter, but it is notable that during the Parliamentary debate on stage three amendments to the Bill, MSPs called for “one family, one sheriff”<sup>170</sup> policies to augment the implementation of the new legislation. Such a policy is feasible with some court rescheduling and would open up the potential for closer integration to move beyond it being framed as a theoretical possibility (Hester et al., 2008).

## 6.5 Conclusion

This chapter has explored victims’ personal experiences of waiting, the disjuncture of different civil and criminal court timelines and how the juxtaposition of emotion and reasonableness could be realigned by a more empathic response from criminal justice agencies to mitigate the pressure of court.

Within a trial, this may translate as an anti-accused sentiment and risks compromising the right to a fair trial. Distinct from inviting emotional outbursts into the courtroom (2011: 2), Karstedt – citing Sherman – calls for an emotionally intelligent justice system (2011: 3). Whilst institutions may not be capable of ‘intelligence’ (and ‘intuitive’ seems more apt), she envisages a system which acknowledges and legitimises a range of potential emotions – including the impact of trauma – and frames (Charles and Mackay, 2013: 594) the justice response accordingly. Indeed, emotionally intuitive policies have greater success in organisations exerting high levels of control over the work-place (Abraham, 1999). The current ‘outcome’ focused approach is challenged by a call for greater participation and “an emotionally intelligent efficiency” (Tata and Jamieson, 2017). A legal distinction can be made between the victims’ views and the impact on the victim (Ashworth, 2014). The former ought to be relevant pre-trial at the stage of case preparation and the latter admissible in evidence. Thus, the appropriate catharsis for and translation of victim’s emotions are intrinsically linked to the timing as well as the response by practitioners to those emotions, which further underscores the need to challenge embedded views of reasonableness.

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<sup>170</sup> <http://www.bbc.co.uk/news/live/uk-scotland-scotland-politics-42858902>; Accessed 01/02/18.

Charting the timeline of the participants' experience of the criminal justice process illustrates the inordinate, uncertain wait. In contrast, examination of policy and legislative reform shows a drive to progress the violence against women agenda and to improve Scottish Government and legal responses to domestic abuse. This is a stark reflection of the gap between rhetoric and practice for victims and the troubled relationship between personal and public timelines. The women's narratives show that government policy and practitioners' practice policy of framing the justice response in terms of the trial is unhelpful, and that the wider gendered problem of how women are conceptualised within justice is symptomatic of an often un-empathic response which fails to listen to victims.

Conceptual, procedural and physical barriers to justice emerge. Three conceptual barriers are: mis-timing; risk; and power and control. These reflect the key issues raised by women and are linked. They highlight the unique dynamic for women who have experienced intimate, gendered abuse. Procedural barriers encompass lack of training; volume of reported cases and resources. Physical barriers are for women perhaps the most important. They relate to safety, child protection and finances.

The disconnect between the policies examined in chapter three, seeking to redress the physical and procedural barriers and women's reality, lies in common misunderstandings of these conceptual barriers. They are so intertwined in other barriers that a failure to recognise them has led to opportunities for meaningful progress to be missed. This chapter has identified misunderstanding and mismanagement of emotion as a destabilising and disempowering factor. It has also highlighted what I have termed the tertiary victimisation experienced in the traumatic wait both for court and at court. Systemically addressing these barriers is not straightforward.

In chapter five, the workers' narratives allowed an examination of the management and language of risk, through a temporal analysis which challenged the timing of risk assessments and advocacy interventions and what they mean, in reality, for women's safety planning and child protection.

Chapter seven will consider who has control at different points in time throughout the court process and dissects why an understanding of shifting power is critical to the efficacy of a domestic abuse trial. This involves an appreciation of women's voice and how they strive to find agency in the process; sometimes independently and sometimes through IDAAs.

Assessing the cumulative effects of these victim experiences, chapter eight forges a realignment of the competing chronologies explored in preceding chapters to craft a re-conceptualisation of a criminal justice system which dismantles the barriers exposed here. This becomes attainable when lessons for victimology are borrowed from penology, whereby IDAAs might gain greater respect, the realities of emotion are recognised, and victims' experiences are better understood.

## Chapter 7: Defining Victim Agency for the Coercively Controlled

“I speak because I must harness the moment.”

(Christina Schmid, war widow, speaking to Elizabeth Day, July 2010)

### 7.0 Preamble

The theme of control dominated my interviews with the women who took part in this research. They spoke of their feelings of a complete lack of control, the impact of seemingly invisible coercion by the perpetrator and the rigid control of the criminal justice response. Defining control as “the power to influence or direct people's behaviour or the course of events” (Concise Oxford Dictionary, 1995) explains perceptions of powerlessness.

In chapter six, I explored the impact of women having responsibilities without corresponding rights, both within an abusive relationship, where they strive to mitigate the frequency and impact of offending behaviour and throughout the court process, where they endure what I have described as the ‘tertiary victimisation’ of waiting. All of this, combined with feelings of powerlessness, suggests victims’ diminished agency. This seems irreconcilable with the vital, hopeful, ‘can-do’ attitude of the women I interviewed. This chapter challenges some of the feminist debate on women’s agency which denies scope for autonomy within the criminal justice process. I explore the relationship between agency and control through the feminist literature and through my research participants. Any reconciliation of this conflict is, I argue, bound in questioning out-dated understandings of public/private dichotomies.

The conflict within relationships, between a victim’s assertiveness and a perpetrator’s coercive control has been explored (Stark, 2007; 2009 and Gondolf and Fisher, 1988 on active ‘survivors’), and discussions of victim agency within the court process have been well-mined (Schneider, 2000; Picart, 2003). However, little consideration has been given to the combined effect of both on individual victims’ experiences.

Linked to the challenge of waiting, the impact of being powerless within a state-imposed structure, like the court process, after the experience of being coercively controlled in an intimate relationship, compounds the experience of trauma (Elliot et al., 2014: 588). Furthermore, the sensation of powerlessness is not the result of a passive response by victims, but is often imposed upon them by the formal structures of the justice response. The adversarial process is problematic for all victims, not least those who have experienced domestic abuse. Sanders and Jones (2011) echo Shapland (1986) when they observe that victims are both peripheral and essential to the adversarial trial: they are essential witnesses in the proof of the charge, but are still not recognised as a formal party to proceedings, despite the additional rights afforded by the 2014 Act. It is frequently assumed by researchers that the only options are an abolitionist/reform argument (Sanders and Jones, 2011). However, Hoyano (2015) is clear that the flaws within the system are not all attributable to the adversarial process and that victim and accused's interests need not be pitted against each other. Moreover, Skolnick (167: 69 in Moody and Tombs, 1982: 100) observed that:

“If the adversary system is defined with only the trial in mind, we are blinding ourselves to the realities of a system of decision that is predominantly pre-trial in character.”

It is this debate, within the context of recent legislative reform which formally recognises the victim within the court process,<sup>171</sup> which I seek to engage, by charting the power play within a typical domestic abuse prosecution and citing the women who perceive a lack of power in the smallest moments of that process. Contrary to Starmer's (2014) dismissal of victims' rights' reforms as ineffectual “bolt-ons” I suggest that relatively minor alterations could have a powerful impact.

The chapter thus engages the literature on agency examined in chapter two, as well as situating the interview data within the process and developing our understanding of the victim advocate introduced in chapter five, to identify how the public/private dichotomy and the agency/control power inter-play may be reconceptualised.

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<sup>171</sup> The 2014 Act.

## 7.1 Defining Agency

Agency is a problematic term in gender-informed research on victims. In relation to violence against women, views are divided amongst feminists about whether women ought to be cast as victims or assertive agents (Schneider, 2000: 74-5). Hoyle and Sanders (2000) advocate a model of victim empowerment which is centred on individual choice and does not prefer the public interest (see also, Mills, 1998). There have also been warnings that a social mentality of victimisation could emerge in which all women are perceived victims (Stanko, 2000; Mythen, 2007; Donegan, 2018). Yet, 'power feminism,' (Schneider, 2000: 75, quoting Roiphe, 1993) which asserts women's complete agency, denies the reality of constraints on women because of abuse and creates scope for blame for decisions taken in often dire circumstances. Schneider (2000) and Picart (2003) advocate a more complex notion of agency, which takes account of the multi-faceted nature of women's lives and recognises agency as a spectrum. This is difficult to achieve within a legal framework (Schneider, 2000: 85) and any victim/agency dichotomy is unhelpful for those who have experienced domestic abuse.

Victimhood is commonly associated with blamelessness (Dunn and Powell-Williams, 2007), which assumes a clear divide not only between victim and perpetrator, but also between victimhood and agency, so the tensions seem apparent: one active; one passive. Yet, the notion of the passive victim has been challenged in this thesis, and, even within the most constrained circumstances, it has been shown that, within an abusive relationship, victims safety plan, assess danger, weigh (limited) options and resist (Schneider, 2000: 84; Johnson, 2008: 51). It is therefore unsurprising that the women I interviewed had an expectation of some agency within the court response. They did not interpret agency as power to direct the court process or control its outcomes; it was autonomy over small details which affect them: an understanding of the process; information and explanation when they ask for it; and safety. Implicit in all of these is predictability, which I argue is central to women's autonomous decision-making. Critical to women's agency within the court process is a guarantee that the control exerted upon them is by the formal agencies of the criminal justice response and not by the perpetrator.

I suggest that there are three aspects to agency for victims within the court process. A definition ought to include, first, the capacity for informed choice; second, freedom from further criminal conduct; and, third, a means to be heard. Each may have limiting parameters, but they combine to create potential for agency within the court process. Informed choice means that when a woman makes a call to the police to report domestic abuse, or is asked by the police to provide a statement, she knows the consequences of her action: that the criminal justice response is predictable, understandable and transparent. Freedom from further criminal conduct means that the act of reporting an allegation of criminal conduct ought to stop further abuse. The interview data from this research suggests that far from bringing domestic abuse into the open, reporting criminality represents an opportunity for the perpetrator to coercively control his victim through abuse of the system. Agency within the court process encompasses having your voice heard. This may be within the formal setting of a trial, but need not be.

The remainder of this chapter focuses on these three elements of agency through the research data and the ways in which women might exercise autonomy within the criminal justice process. The constraints upon them are different, if overlapping, from constraints within their relationship. They often continue to experience abuse after reporting to the police. In some cases, there are examples of what we might understand as further offending or ‘new charges,’ for example stalking or breaching bail. However, in many instances, there is evidence of more sinister abuse, where the civil and criminal justice processes are used as tools for further manipulation, control and abuse. The reasons that this is permitted are complex, but are linked to women’s experience of not being heard and the gendered nature of the problem. To explore this, I will focus on how my research participants experienced a lack of agency in the criminal justice process and how that reflected their hopes and expectations.

## 7.2 Elements of Agency

Women’s expectations of when they will be heard do not align easily with current criminal or civil justice procedure, and the clashes between them compound feelings of invisibility and powerlessness. Christine sums this up:



“That’s the way it leaves you feeling, like your story’s untold. And at no point at the start of it, did I feel the need to tell my story. But by the time court came, I had psyched myself up that that’s what was gonnae happen and then we would all be ok after that. That’s kind of what, you know, we’ll go to court, we’ll tell the truth, he’ll get a proper jail sentence and we’ll all feel like justice has been done.”

Christine’s expectations were shaped by her involvement in the process. It seems easy to dismiss hopes of a trial, truth-telling and just outcomes, as misapprehensions of how the process *really works*. Yet, Christine’s experience suggests that the criminal justice and third-sector agencies bear some responsibility for her expectations. None of the women I interviewed were motivated to phone the police in a search for justice. They called – or a call was made on their behalf – in a moment of crisis. Their subsequent engagement with agencies led them to believe that there would be a trial, at which they would give evidence. For some, there was hope of a plea. Their fear and nervousness around this process, which Christine described vividly with a description of being sick on the court steps, is dissipated by galvanising the little agency they have. As they have limited understanding or control over the process, their ability to tell the truth and be heard is a fixed anchor. A picture emerges of organisations emphasising one potential version of events as an ideal, where women expect that they will give evidence at a trial and, subsequently, that their voice will be heard. Cast in this light, the need for accurate and realistic information provision becomes an imperative if criminal justice agencies are not to bear responsibility for causing further trauma. There may be a perception/reality gap for victims, but it seems that the expectation of an ideal is perpetuated by the agencies which understand the process but sometimes fail to disclose the range of possibilities. Chapter five explored the role of victim advocates and their capacity to augment agency in their support of women. This underscores the need for them to be accurate, effective and realistic.

### 7.2.1 Informed Choice – Understanding the Process

For many, informed choice means the ability to decide whether or not a prosecution should proceed. Such an argument is at the centre of much of the feminist debate on agency. This research is predicated on a presumption in favour of prosecution, notwithstanding the current limitations of the criminal justice response. Public recognition of domestic abuse as a

societal wrong is the only credible challenge to the structural inequalities which allow criminality to continue. However, it is important to remember that an initial decision has often been made to call the police and that is based on a belief that the criminal justice process will offer an accountable response, as Ayesha told me:

“the only reason we speak up is because we’ve been given hope that if something went wrong, that was, they [partner] didn’t do right, you can speak up and you will be given justice, but no.”

Ayesha spoke of the compound barriers for women in her community and highlighted her vulnerability in reporting. By going beyond her community, she needed to be able to rely on the justice response. Pro-arrest and pro-prosecution policies are only defensible if the discretionary criminal justice response is accountable, predictable (Hutton, 1999: 169; Hawkins 2002: 428) and safe. In this, the role of the victim advocate, explored in chapter five, advising on the process is critical; it is achieved through information provision, explanation, support, and safety planning, so that choices are informed and safer.

The accounts I heard were often muddled and the information provided was not always an answer to my question, particularly when I asked about court. These chaotic narratives reflect a lack of understanding of the criminal justice process, despite involvement in it. Alarming, women can be involved in multiple court cases over a period of months, if not years, as the victim of serious allegations of imprisonable offences and party to welfare hearings relating to their own children, and then emerge at the end of the case(s) with an enduring lack of clarity on court procedure; the burden of proof; the role of court personnel and the implications of court decisions for them. Kirsty was aware of her poor understanding of the process and consciously sought information, only sometimes getting the help she was looking for:

“To get advice, I phoned the Scottish Women’s Rights Centre, tonnes! I was trying to find out the system. I went to Victim Support who said they would get back in touch with me and they just never did.”

Knowing that VIA is available nationwide and that they should contact all domestic abuse victims at each stage of the prosecution process, with case specific information, I asked if they had been helpful. She responded:

“I never got any phone calls from them. I don’t think I heard from them at all.”

It is not clear whether there was a glitch in procedure and she genuinely did not hear from them or if their role was unclear, as she did refer to contact from Victim Support. When she made a complaint about a decision which had been made to exclude further charges, she had no clear understanding of which agency was responsible for making the decision:

“I didn’t understand whether it was the police who wouldn’t follow it up or the PF, so I’m not quite sure. I felt like I kept phoning and asking question and it always felt like you were kind of asking too much.”

The implications of feeling like an inconvenience by seeking basic case information are potentially serious. Matilda (Women’s Aid), one of the support workers, explained to me:

“some women that we work with, they just dinnae want to put anybody oot...they’ve always been made to feel like a burden.”

This explains why some of my participants navigated the court process without fully understanding it and without asking for help or an explanation. It also highlights why informed choice is such a critical part of agency. Despite being court-focused support, the ASSIST model remains choice-orientated, as Chloe (ASSIST), an advocacy worker, explained:

“My job is not to tell a woman what to do, my job is to suss out what a woman needs and then guide her in her choice but making it plain that it’s her choice and empowering her to do something about it with the knowledge of what her choices are.”

Given ASSIST’s institutional advocacy role – which one worker, Jean, identified as sometimes requiring a “positive spin” – there are emotional risks attached to raising expectations of choice and empowerment, beyond the extent to which they can be met. Eilidh, in a blurring of roles which both adopts ownership for part of the problem and relates insight into her own victimisation, observes:

“Reporting is a risk factor. So, if you’re going to put people through the risk factor, if you’re going to expose them, you’ve got to protect them. But we just expose them all over again.”

Christine provided some insight into the ongoing emotional complexity when she described decorating her house, as part of moving on “because my house was wrecked with him and smelt of him, so I went mad with the emulsion.” However, she conceded that “the only room untouched is my bedroom, it’s my last taboo; most nights I still don’t sleep in it.” Reflecting on this, there is no other crime where such a significant proportion of victims remain living within the locus of such intimate violence, revisiting the trauma every day. This explains the disconnect for criminal justice agencies in identifying appropriate systemic responses to a private dynamic, but Matilda also identifies the ongoing nature of coercive control, beyond the ‘end’ of the relationship:

“A lot of women, when they have been abused, they can actually become their own abuser in a way, in their head because they are like...am ah a bad person, and questioning themselves, into believing that. So even though the abuser is out of their life, he’s still in their head and they’re still saying maybe he was right about that, or maybe he was right about this and so in a way they continue the abuse because they’ve got it in their head, even though they are out of the actual vicinity physically.”

Matilda explains how this is addressed by support workers:

“That’s why we give a therapeutic service and it’s about questioning all the crap that he’s put into their head and that they continue to run around their head.”

It is a challenge to engage and empower women with heavily compromised agency and to give them the opportunity and confidence to ask questions and make informed choices. Reflecting on the data, SWA’s ethos of women-helping-women-helping-women resonates with how some participants have shifted from victim to supporter, in their bid to improve agency. For those still experiencing the court process, the role of the advocate is important in building trust and encouraging them to “question all the crap.” However, it brings organisational responsibility to ensure that confidence in the justice response is warranted and that involvement in the process does not place women at further risk.

### 7.2.2 Freedom from Further Criminal Conduct

Women expressed fears that phoning the police would exacerbate the situation in the short-term (Hoyle, 1998: 189). Laura was concerned that “he’d go crazy” if she reported him. Yet, there was hope that phoning the police would eventually lead to safety and protection. The general discourse that domestic abuse should no longer be hidden and that it constitutes criminal behaviour, gives an expectation that reporting will lead to action by agencies and cessation of abuse. Libby (Women’s Aid) highlighted the challenge:

“I think it’s really complicated, is not it? Being able to prosecute a pattern of coercive control, I think that’s a piece of work. It comes back to the attitudes of and the awareness of the people within the court process and someone being prosecuted, because you’ve still got to get to the point of conviction.”

In fact, the women I interviewed experienced new and unforeseen abuse, in plain sight of the criminal justice agencies. Joyce told me what happened to her the day after a court hearing:

“I got up for work at half past four and let my wee dog out and all my ropes had been cut and I was frightened he was behind the shed and I noticed, I’ve got two special gnomes, one was my gran’s and the other one my late dad had bought me and he knew that and they were gone.”

Chapter six recorded the impact on Joyce of receiving numerous curry deliveries to her house after each court hearing: something and nothing. She also reported seemingly minor breaches of bail, where her ex-partner was near her place of work. When we know that she starts work so early in the morning; when we know that the curry deliveries were made by hacking into her account to access her payment details; when we know that her ex-partner also bought her a gnome when they were still together and that he had placed it in between her two special ones, a picture emerges of a pattern of abusive and intimidating behaviour, much of which may seem relatively minor in isolation, but accumulates to a significant safety risk. This is alarming when she has taken the step of reporting to the police and presumes that generates a level of openness, monitoring and safety.

The criminal justice process intended to help them was also used as a tool by the perpetrator for further abuse. These ranged from delay tactics in the court process to deploying the mandatory arrest policy to secure the arrest of the victim as a perpetrator. Julie called the police at 4am because her partner assaulted her in front of her son and was threatening to kill her. Following a previous call, there was already a STORM marker<sup>172</sup> on her phone:

“He came up to my bedroom with a knife and I ended up going for the knife and I stabbed him because he’d been threatening to slit my throat if I phoned the police again and I was still waiting another ten minutes before the police came and I got charged with attempt murder.”

Despite several efforts to report to the police, Julie found herself in the situation of defending herself, convinced that she and her son were about to be killed. The mandatory arrest policy led to Julie and her son both being arrested, which forced her to make an admission to secure the release of her son and resulted in a prosecution commencing against her, which, after protracted investigation, was discontinued after a year and resulted in the loss of her tenancy.

Sarah was reported several times to the police, leading to her feeling a constant need to justify her actions over the smallest things and a paranoia that she may have done something wrong. One evening, two officers attended her home in relation to an allegation that she locked her front door at night. When she challenged the sergeant the following day, his response was symptomatic of someone who potentially recognised ongoing control by the perpetrator, but chose not to challenge it. She described her interaction with the sergeant:

“I am here because you sent two officers to my door. Oh yes, I know I did. We had your ex-partner in and I felt he was taping me, he had his mobile phone up his jacket sleeve and it was just easier to say we’d investigate.”

Liz described a similar experience:

“His now wife used to send the police to my door every other week accusing me of something to try and make me look like a bad person. They never charged me with anything. He made up some amount of random lies.”

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<sup>172</sup> Police Scotland place a marker on ‘at risk’ phone numbers and undertake to prioritise attendance at calls from those numbers. ‘STORM’: System for Tasking and Operational Resource Management.

Research has warned of an increase in wrongful arrests of victims, as a result of mandatory policies (Brooks and Kyle, 2015), and some liberal feminists have suggested that, as with presumptions in favour of prosecution, they limit women's agency and thwart equality (Nichols, 2014: 2118). This is to misconstrue the issue. The presumptions in favour of action are amongst the only policies which seek to address gender inequality. They are a recognition that women are at risk of further manipulation and coercively controlling behaviour. So long as women have the power to 'choose' whether or not a prosecution proceeds, perpetrators will have the power to evade justice by forcing an end to proceedings. Presumptions in favour of arrest and prosecution are not blanket erasers of professional discretion. Within the Joint Protocol (2017) there is scope for discrete decision-making, and it is incumbent upon the responding officers to recognise the main perpetrator and to address vexatious complaints. However, this relies on officers recognising coercively controlling behaviour, which is predicated on adequate training in the dynamics of abuse (Myhill and Hohl, 2016; Robinson et al., 2017; Barlow et al., 2018). Recalling the current lack of face-to-face training narrated in chapter three, this explains the anecdotal evidence in the current data relating to an increase in dual arrests (from workers and women, like Julie, who had been arrested), which is borne out by the academic literature (Brooks and Kyle, 2015). This highlights the need for meaningful training and serves as an illustration of the inaccuracy of the public/private dichotomy. In the same way that domestic abuse is more than physical assaults and includes psychological and emotional abuse, so the "violence of privacy" (Schneider, 2000) is not simply behind closed doors, but infiltrates the relationship beyond the home and influences wider perceptions of the victim. The fact that the abuse is able to continue within the courtroom, the child contact centre, lawyers' offices and police stations, means that women's narratives have not yet been fully understood and gender inequality remains within structural responses. Stark (2007: 197) articulates:

"The appearance of coercive control against a background of formal equality is one of the more tragic ironies in sexual politics...this new tyranny is only possible because the same societies that now promise women full sovereignty continue to disadvantage them as a sex."

This explains why ongoing coercive control is possible, apparently in the open, even during the court process. Liz described the impact of her ex-partner having control over her throughout the whole civil and criminal court processes:

“See if he had taken me into a corner and beaten the living daylights out of me, I would have got over it. Alright, it would have taken a wee bit of time, but I would have got over it. See the mental damage that somebody does to you, you never get over it. The mental damage is forever lasting and the system does not help when they fight against you and they don’t believe you. He had so much control over me at every point. Nobody objected or stopped him.”

She provided an example of taking her daughter to a child contact centre and asking her afterwards how she got on:

“I can’t tell you, it’s a secret. Why can’t you tell me? It’s a secret, daddy told me not to tell you anything. And that was the start of it...and all her problems started to get really bad and she didn’t want to go to school.”

Through Liz’s perseverance over four years, this ongoing control was eventually recognised by the civil court, when the evidence of a child psychologist was admitted “to say Ada was being mentally abused by her father and contact got stopped.”

The slow response by the court and the need for expert evidence to persuade the sheriff are perhaps less surprising when considered within the context of the wider community, where the challenge of acknowledging abuse was highlighted by Laura:

“Even when people recognise what’s happening, it’s such a difficult one to broach. How do you say to somebody, I think he’s being horrible to you, I think this is what’s happening?”

Translating this to the courtroom, Eilidh questioned whether professional training was sufficient and challenged the efficacy of expecting police and prosecutors to deal with cases of domestic abuse appropriately, as part of general duties:



“There are a lot of people who don’t get domestics, if you don’t have that background and you don’t have an insight in any way, they’re really hard on complainers [victims].”

This understanding of the complexity of their own situation and the difficulties faced by others to recognise it and respond appropriately may provide some explanation for the catalogue of abusive action permitted or ignored within the justice process and is linked to why women perceive that their voice is unheard.

### 7.2.3 Being Heard

There are two ways in which it is important that voices are heard within the justice process. First, they are given an appropriately timed opportunity. Second, that when they speak, they are actually listened to. For a third-party witness to a road traffic accident this is straightforward, but for victims of gender-based violence, it is more involved and intrinsically linked to perceptions of women’s voices as reasonable (Schneider, 2000: 79). There is evidence in many of the interviews of repetition of phrases and expressions. Observing this repetition in the context of the wider interview data – where many women revealed that they do not feel as if anyone is listening to them – it seems that the repetition acts as a form of emphasis to underscore points of importance. It resonates with the emerging picture of a perception of institutional disbelief. As Ayesha remarked:

“Why would a woman make up that kind of thing, that would be very lowest. I wouldn’t be able to speak up.”

Speaking up does not just mean giving evidence at trial, but also relates to being heard throughout the process. Julie did not give evidence because a plea was accepted, but no-one spoke to her about it or gave her an opportunity to ask questions:

“I don’t know why we wurnae asked or given the option to go through with it. It just felt like a slap in the face. I thought the PF would have come out when they reduced the charges and that and asked us, rather than just sending us home that we didnae know.”

Eilidh took her son, who was a witness to domestic abuse and a victim of an allegation of assault by his father, to the local GP to obtain a background medical report for court. She

later found out that a social worker supporting her ex-husband had attended the GP ahead of her, acting on her ex-husband's behalf, so that when her young son attended the doctor, he had already been provided with a contradictory version of events. The manipulation by her ex-partner and severity of the criminal charges was not recognised by the GP and her son was not believed. Her ex-partner maintained control of the situation and ensured that her voice, as a mother, was not heard. This sentiment was echoed by Liz in her struggle through the civil court when she told me that: "I don't think I was heard as a mother. When you go to court for your children, you're their voice. If she's [daughter] got no right, I'm her right, I'm her voice." Both Eilidh and Liz felt that they had not been heard or believed. It is thus both opportunity and belief. When these coincide, the result can be powerful, as Megan described:

"I said I wanted to do a statement myself, which I wanted the Sheriff to hear...I remember the Sheriff at one point looking over at me, he's just looking over at me, as the stuff's being read out, he was starting to understand everything, he was looking like his wig was going to fall off. He totally got it and we broke for lunch and walking back into court to hear the kind of final verdict on it all [the Fatal Accident Inquiry], it was for me, just really powerful that that was me getting closure, there at that moment in time,...because I had to hear my voice the whole way through this, I just think it's crazy that that's not there for everybody."

This leads to the simple question put by Laura: "But why can't I be believed?"

An exploration of the wider process, through the experiences of victims, will hopefully inform a better understanding of the extant powerlessness and the opportunities within the process to establish some autonomy. Pervading all aspects, Jenn's experience highlights the fact that victims' responses are emotional and subjective and largely dependent on available support networks. Despite a relatively 'positive' experience with a 'good' outcome and strong family and advocacy support, she had awareness of the precariousness of support and her own lack of control:

"Wherever we took that enthusiasm and momentum and engaged with any of the other people throughout the process, they were always so quick to just sort of keep helping us moving forward and they were always great, but I think I could have so easily not have had the network that I did and I could have just curled up and that

would have been terrifying. It could have been really really scary because it could have validated how small and out of control I already felt.”

For women, the outcome may be important, from a safety perspective, but it will not necessarily define their experience of the criminal justice response. Emily (Community Support Project) explained:

“You know, it’s like a machine is not it? And the machine does not make allowances for individual situations, I think it’s hard enough for anybody who’s not traumatised, who’s not terrified, and who’s not emotionally connected to the perpetrator. And I think if you get a good outcome, it helps to sweeten that a wee bit and make it all worthwhile, but if the case falls, it’s devastating.”

Despite this, there was evidence in my data of women being focused not only on their own situation, but on preventing future victims of abuse. Jenn was philosophical about her own experience:

“It feels like that’s the point of it all. It’s not just so I can go: this thing happened to me. There has to be something more, that those years can offer the universe, because it’s still happening. It’s still happening.”

Thus, institutional advocacy is important, not only in persuading women to engage with the criminal justice process, but also in gaining women’s respect and trust that their voice will be heard beyond their own case.

## 7. 3 Expectations and Experiences of Engaging Justice

### 7.3.1 Reporting to the Police

Phoning the police may be the only point in the process when control rests wholly with the victim. There are many victims of domestic abuse who are subject to third party reporting and do not even make this initial decision. The women I interviewed had either made the call to the police themselves or been present when their child made the call. They all had an

expectation of receiving help, but conceded to having no real appreciation of what would follow. As Joyce explained:

“At that stage, you’re trying to tell the whole story, but in a bit of a state. So, having never been through anything like that and only seen it on a television programme...when it actually happens to you, it’s mind blowing.”

On being asked how she felt making that initial call and subsequently talking to a police officer, she said:

“I felt it was all rushed. It was Saturday night, they were busy an’ it was just like a domestic type thing. They weren’t really listening to me.”

This pin-points the very short space of time in which Joyce felt in control of her situation and it also highlights the challenges of training front-line officers to deal sensitively with domestic abuse calls at peak times. The timing of the call and the officer who responds should not be a matter of luck, but a predictable process around which an informed decision can be made. Following this initial call and acceptance of an ASSIST referral, she acted on safety advice and re-asserted control by enacting a safety plan. This included changing her phone number, reinforcing security and bail conditions were put in place. Nevertheless, her ex-partner gained access to her back garden, attended her place of work and obtained her new phone number by intercepting her Sky account. She also received a house call from two uniformed men, purporting to be ‘police’ officers. They gained access to her house under such pretence. When she later contacted Police Scotland, they had no record of officers attending her house.

Each time he breached his bail, Joyce called the police: a partial regain of control and decision-making. As a result, there were a number of different prosecutions in different courts. She describes her confusion and anxiety:

“I didn’t know whether I was coming or going. I needed to know what was happening. Don’t get me wrong, after every court case a PF [VIA<sup>173</sup>] would phone

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<sup>173</sup> The participant refers to receiving a call from the ‘PF’ after each calling of the case. In fact, it would have been a member of VIA staff, co-located in the PF office.

me and tell me what happened, but we were lying there in the dead of night and I feared for my life. I've never been so scared in my whole entire life."

Despite information-sharing protocols being followed and advocacy and Women's Aid support in place, the failure by her ex-partner to adhere to court orders and the apparent lack of consequence when he did, prolonged her fear and lack of control over her own safety and that of her child. There was no meaningful protection. Elaine also reported a number of breaches of bail and stalking behaviour, which resulted in multiple cases running in tandem and confusion about the process:

"There were eight charges and one stalking. There was a big lot of charges that he had faced...I cannae keep track of them. I had to do my ain homework to see what the stalking was; had to dae my own homework to see what he would get: would it be community service? Would it be jail time? So I had tae dae that, naebody gave me any information aboot that and I still don't know to this day what incident he got charged with. I don't know who I would phone to get that information."

It was a difficult decision for Elaine to phone the police in the first place. She talked about a stigma attached to calling the police in the west of Scotland town where she lives; reconciling the fact that her children would not speak in court against their dad; and ongoing pressure in her relationship with her son. She reported 20 years of historical abuse and then, like Joyce, reported breaches of bail, stalking behaviour and threats. By the time she attended court to give evidence, she had no idea which 'charges' or 'incidents' from her lifetime of abuse were reflected on the complaint. She answered questions without knowing which occasion the court officials were referring to and at the end of the process, despite her ex-partner receiving a sentence of imprisonment and an NHO, she was unclear on which offences he had been convicted and did not know whom to approach to obtain the information. Moreover, when he told her children she would be killed if she went to the police again, he was not convicted. When I interviewed her, following his release, there was a warrant outstanding for breaches of the NHO. For Joyce and Elaine, a disempowering factor, reflected in many of the women's experiences, was the confusion around the process.

Both women also experienced a continuation of abuse beyond the court process. Just as a conviction and sentence did not end the abuse for Elaine, a year after her initial report to the police, Joyce was referred to the Task Force and learned that her ex-partner had previously behaved in similar ways towards another partner. It was, therefore, following a year of confusion and self-doubt, that she understood she had been the victim of more than physical abuse:

“Every time I had to phone the police, they would ask about the harassment order and it was question after question and my head was bursting and I was like, I’m not phoning, I know I’m going to have to go over this big story to talk about curries being delivered. But then again, it was part of his profile, that was to scare me, to let me know, I’m still here and I can get your number, I can get your information. But at the time, I didn’t look at it like that until the police explained it to me.”

Re-reading her words about why no-one would be interested in the numerous curry deliveries she received after each court case provides context for the apologetic vocabulary used by many of the interviewees. The interview data is peppered with ‘odd’, ‘bizarre’, ‘strange’ and ‘weird.’ Initially, I postulated that they were struggling to explain their experience and how the person they had loved could behave in such a cruel and destructive way. On reflection, it seems symptomatic language of women who feel institutionally disbelieved and, as part of a pattern of coercively controlling behaviour, have been made to feel that they are ‘going crazy’ (Stark, 2007). When even the victims themselves perceive that much of what they are narrating sounds ‘bizarre,’ it is unsurprising that they may not be deemed credible in court. This is the clearest indication in the data – challenges of the defence of reasonableness aside – that the 2018 Act offers scope to validate victims’ experiences more accurately than the current law and to highlight to them, and others, the criminality of coercive control.

### 7.3.2 Before Court

The tertiary impact on waiting for and at court has been explored in chapter six. After a report to the police, there is a tension between the long and uncertain wait experienced by the victim and the intense activity period of other agencies. Following a 999 domestic abuse call, the police spend an average of nine hours in response, where there are children in the

household.<sup>174</sup> In 2016-17 they responded to 58,000 ‘incidents’, of which approximately half were reported to the Procurator Fiscal.<sup>175</sup> There is a risk that service standard will be diluted through such volume. On receipt of a police report, with the accused either in custody or released on undertaking to attend court on a future date, the Procurator Fiscal will assess the quality of the evidence and make a decision in the public interest whether or not to prosecute (Joint Protocol, 2017). The case will be referred to VIA and transmitted to Scottish Court Service ahead of a custody hearing. A sheriff will hear parties in relation to bail and, assuming a plea of ‘not guilty’ has been entered, future dates will be set. After court, the victim should receive a call from VIA with the outcome of the court hearing and details of any bail order. Whilst the victim is largely passive at this stage, ‘life’ hurtles on full pace. The women spoke about school appointments, civil court dates, visits to contact centres, doctor’s appointments, not being able to afford time off work, dogs to walk, guide camps, sports clubs, family occasions and negotiating ‘trigger’ dates. They spoke of a life that was continuing as normal and yet bearing no resemblance to life before, as they double and triple checked locks, slept hypervigilant on sofas, chased agencies for information, repeated their story to authorities with different purposes and waited for information. Millie, a worker at Women’s Aid, identified this link between the time until court and the inability to completely regain control:

“When I’m supporting a woman, it’s sort of to try and empower her to put things behind her quicker. So, the abuse...so, that’s when she moves on from here, she’s delayed with the issues that came up in the abuse, however, when you are working with somebody on that, to try and work with somebody to put something behind them that is actually still in front of them because they are going to have to go through it all again in the court. So they can’t put it behind them because actually it’s a prospect for their future.”

Between the custody hearing and trial, the Procurator Fiscal will cite witnesses, request evidence from the police and instruct further enquiries, if required. Advocacy services and support organisations work to build confidence and prepare for court. In such an

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<sup>174</sup> Detective Chief Inspector Lesley Boal, Police Scotland speaking at the SWA annual conference, 1 December 2017.

<sup>175</sup> 30,630 incidents, see: <http://www.copfs.gov.uk/images/Documents/Publications/Statistics%20-%20Domestic%20Abuse/DOMESTIC%20ABUSE%20CHARGES%20REPORTED%20TO%20COPFS%202016-17%20Word.pdf> Accessed 23/02/18.

environment, where the focus is on court (Sanders and Jones, 2011) and there are numerous trials each day in every court in Scotland, practitioners experience time very differently to the victims. Controlling the process, for them, is purposeful, accounted for and passes quickly.

In chapter six, special measures were discussed within the framework of the civil and criminal court processes running in tandem. As ‘deemed vulnerable’ witnesses, standard special measures are available to victims of domestic abuse without an application to the court. There remains an option to apply to the court for additional special measures, for example, a closed court. The application is made by the Procurator Fiscal but identification of which special measures are appropriate falls to the victim. *Prima facie*, this is an autonomous decision about services within the court process. However, if the court visit does not prepare victims for the experience of court, then the extent of informed decision-making about special measures is questionable. Of the court visit, Christine observed:

“I wouldn’t say it prepared me, it was better than nothing but I wouldn’t say I was prepared for the ordeal of going to court.”

Further, maternal responsibility and pressure can result in this choice being largely moot, as Laura explained that she followed what was best for her child and proceeded without screens:

“I wasn’t sure what to do, but Jack had said no, I would quite like to face him, because he knows what he’s done and we know what he’s done...I think for Jack I said ok, I’ll do it that way as well.”

Eilidh and her two children were required to give evidence. The youngest (also a victim) gave evidence via TV link from a secure site. As Eilidh and her elder son were required to give evidence from the court building, she was unable to wait with her youngest son, and a friend took him. Her own anxiety about giving evidence was clouded by concern for her son. All three had a support person. The support people were employed by the witness service and different personnel attended each adjourned trial date, none of whom were known to Eilidh or her children. Nevertheless, Eilidh found the presence of the support reassuring:

“I think it was quite helpful, she was quite calming. I mean, they don’t speak to you much, but she would update me. She was able to find out what was happening at the



remote link because that was a terrible worry for me. It was horrific, a child giving evidence and you're not there."

Seonaid (ASSIST) spoke of her frustration when she was supporting young people who did not feel comfortable with the support person from the witness service, but she was precluded from being in the room. Advocating improvements to the remote link and greater use of it, Emily felt that the court-room measures remained limited because:

"Women will say he coughed all the way through that or he's sighed or he rubbed his hands or he did whatever it is he does that they know he's annoyed."

Where a woman has made a choice to give evidence behind screens, some ASSIST workers<sup>176</sup> advise women that going into court afterwards, to watch the remainder of the trial, may have an adverse effect on the sheriff's ultimate view. Megan was understandably frustrated by this:

"It's just that it should be fundamental to the process that a woman can sit in and listen to the trial and everything that's being said without it making any judgement on whether or not she's scared of him, whether or not it's happened."

The 2014 Act contains a provision to allow the prosecutor to apply to the sheriff for a closed court.<sup>177</sup> This is not something that my participants were aware of or something that had been offered to them. In fact, Christine was shocked, worried and angry when she discovered, following the first procedural hearing, in the midst of life going on at work, that the court was open to reporters:

"Once it had went to that first hearing, I didnae know this, I had no idea what so ever, I changed my statement because of it. I got a phone call at work to say, eh, your assault case is in the Digger. And I was like, what are you fucking talking about, in the Digger? It's made the Digger newspaper, the rag. And your name and address is in it and details about the assault. And I'm thinking, what? What about Rosie

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<sup>176</sup> This seems to be based on an opinion gained from a discussion between one of their number and a Procurator Fiscal Depute in one court, who heard a sheriff make an adverse observation about a victim's vulnerability where she elected to give her evidence behind screens but subsequently sat in open court to hear the remainder of the evidence.

<sup>177</sup> s20.

(daughter) getting bullied at school? So I'm in doing a twelve hour nightshift thinking what am I going to do?"

In all of the information she was provided, the role of court reporters was not explained. A successful application for a closed court would not, under current legislative provision, prevent media reporter presence in the court.<sup>178</sup> The opportunity to revisit this barrier was missed in debate around the 2018 Act, but further research is required on the effects of media presence during sensitive evidence.

The data suggests that remain far from setting conditions for consistent, informed decision-making. It points to judgements and pressures negating the value and potential of protective measures and service rights at court, and it suggests that even after the lapse of months from calling the police, the victim is little further forward in her appreciation of the process. On the eve of the trial, she remains fearful and unsure.

### 7.3.3 At Court

The fear of the unknown compounds anxiety surrounding attendance at court, as Sarah explained:

"I'd never been in a court, I fear courts, I used to go for jury duty and I'd be praying not to be picked."

The victim advocate and the VIA Officer have a role ahead of any court date to prepare victim's expectations. However, at court, within the confines of the uncomfortable waiting room, the prosecutor plays a key role in the victim's experience, as Emily highlights:

"You know, see if she's got confidence in the prosecutor, it makes such a difference because it's about putting yourself in the hands of someone that she trusts. That's a luxury that women don't have. And I think women are realistic. They don't expect magic fairy dust. But they do expect to be taken seriously and to be respected and I don't think that's always the case."

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<sup>178</sup> The 2014 Act amends Criminal Procedure (Scotland) Act 1995 to insert s271HB.

It is on the day of the trial that what I have called ‘institutional disbelief’ is most critical. Unless there is a conviction, there is little prospect of victims feeling believed. A plea of guilty ought to be positive, but if a lesser charge is negotiated (Baldwin and McConville, 1981) and aspects of the allegation deleted, without explanation, this can also feel like, a sign of being disbelieved, if the rationale for the decision is not explained. Laura sums this up:

“Surely somebody’s lies can’t be more convincing than your truth? So he can stand there and say whatever he likes but our stories are all pretty much the same, what happened happened, we’re not adding anything, we’re not taking anything away, what happened happened. But I think the basic premise must be the same for everyone, your voice just is not heard. And there is a huge lack of understanding about the effect that this has.”

Barbara echoes this sentiment:

“As if my word isnae enough. As if, that if it went up to court, my word against his, my word isnae actually enough for what he done over the years.”

Elaine felt keenly that the court did not understand the impact of historic abuse or the dynamic of coercive control:

“It is hard when you’re talking about feelings because you cannae prove that somebody’s a liar. He’s great at lying and I just tie myself up in knots and it would be good if the court could see that.”

For Eilidh, it was the impact of her twelve-year old son, assaulted by his father, not being believed:

“And he’s disillusioned. He just thinks – sighs – what’s the point? What’s the world mum? The world is full of liars. Look what’s happened to us: we told the truth and we’ve suffered.”

The traumatic effects (Burman, 2009) of badgering cross-examination and inaccurate evidence from “interrogative suggestibility,” or leading questions (Wheatcroft and Ellison, 2012: 824), have been examined, but it seems that increased legislation to provide rights to

victims in court has done little to meaningfully improve this negative experience (Zydervelt et al., 2016). Kirsty gave an example:

“And the questions he asked. They make a big long statement you don’t agree with and they they throw in a question that the answer to is yes, you’re kind of like, the answer is yes but I don’t agree with the statement that you’ve said and I felt that I had to be on the ball.”

Eilidh, who knew the solicitor cross-examining her, had a particularly gruelling experience:

“It was probably closest to one of the worst experiences I’ve ever had in my life. I can’t imagine how (my son) feels as a wee boy because it was horrific. You stand for too long, physically, but every time I sat down they couldn’t hear me, so I had to stand back up. I was called a liar for three and a half hours and nobody objected.”

As someone with knowledge of the system, she wryly observed:

“And it was allowed, it was encouraged in fact by the Fiscal’s silence...because had the Fiscal objected, I don’t think it would have been allowed.”

Liz also had a negative experience:

“In the criminal trial I got told I was very manipulative. You always get your own way don’t you? I was like: Pardon?! I’m the victim! Not him! And it was like, really nasty, you know, you’re lying aren’t you? And nobody objected to anything his lawyers were saying. I was the bad person.”

This was compounded by the lack of professionalism of the defence agent afterwards:

“My sister hadn’t given evidence yet and she was in the waiting room, an’ his lawyer came into the witness room on his phone and said, yeh, just had her on the stand and I’ve just ripped her to pieces. And it was me he was talking about.”

It is traumatic to give evidence with very few examples (my data contains one) of the prosecutor objecting to inappropriate or irrelevant questions or the sheriff interjecting to prevent such tactics, which go beyond the purpose of the adversarial process to test the evidence led by the Crown. Court culture remains unfavourable towards objections to cross-

examination, despite recent helpful high court jurisprudence.<sup>179</sup> Within this environment, evidence which ought to be deemed inadmissible on the grounds of irrelevance is admitted, and it is unsurprising that adverse conclusions are drawn about victims' credibility. In the context of being badgered, cajoled and painted badly, reluctance and hesitation to attend court and give evidence become understandable. Moreover, withdrawal from the process may seem like the only way of re-asserting individual control. In fact, this poses the risk of a witness warrant, but victims' evident lack of knowledge of the system – and lack of awareness of this risk – points to withdrawal as a point of protest. The reality of a presumption in favour of prosecution is that it is open to the prosecutor to seek a warrant for a victim or witness who fails to attend. Whilst it is unlikely that warrants will be executed and women arrested, such warrants are routinely sought as an assertion of the Crown authority to prosecute. Lack of engagement seems, from the current data, wholly unrelated to the punitive measures of the criminal justice response, but more symptomatic of the complex decisions women are forced to make about their lives and indicative of the pull of the perpetrator's sustained control. Christine told me that she wrote a ten page letter to the Procurator Fiscal:

“...and then I was having all sorts of, Oh my God, he's going to kill me, I need to get him off moments...he conditioned me, I know now it was conditioning.”

This is an example of the importance of an emotionally empathic response within the court process, highlighted in chapter six. Jane (ASSIST) spoke of the impact of seeing the abuse as a continuum (Kelly, 1987), not just within the drafting of charges, but in the treatment of victims at court and the approach to prosecution:

“I suppose you're trying to help the Fiscal and say, look, this is not just about today about her being questioned in court, this is the dynamics of abuse, this is what can sometimes happen and as much as we want a prosecution here and as much as we want a woman who'd going to give evidence it's not that she does not want to talk to you, it's just that she can't. At this point in time, she can't. And based on how the

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<sup>179</sup> Robert Spinks v Procurator Fiscal, Kirkcaldy [2018] HCJAC 37. For a discussion, see chapter three.

Procurator Fiscal deals with that client at that point in time can have a big impact on further reporting and coming back to court.”

In assessing the public interest, prosecutors are likely to consider the risk of re-offending (Crown Office, 2012: 9), but not the likelihood of victims re-engaging. It is unlikely that the authority of the court will succeed in compelling a woman to speak in this situation, as Jane rightly pointed out that: “at that point in time she is more frightened of him.” Christine divulged the sinister reality of where this fear comes from:

“At the door, he whispered at that door that if he got lifted, he would get me and he’ll get me and it does not matter when, if I believe him.”

It is increasingly apparent that court personnel ought to reflect on how to engage victims of domestic abuse within the process over time. A traumatic and negative experience in court for a victim is unlikely to result in a conviction and it means that she is less likely to report future offending. A presumption in favour of prosecution need not mean continuing a prosecution to its conclusion, regardless of the consequences for the victim. A presumption, or decision, to prosecute, is not an isolated, one-time decision, but is constantly subject to review (Hawkins, 2002: 327; Hawkins, 2003: 187) and could, sometimes, be reviewed more rigorously.

Likewise, whilst the adversarial nature of the contest makes discomfort inevitable, my data goes some way beyond that and points to unfettered questioning and bully-tactics within the courtroom. Carloway (2015) commended other jurisdictions which require solicitors and advocates to be ‘ticketed’ before they can cross-examine vulnerable victims (2015: 31). Requiring defence agents to undertake awareness-training, prior to cross-examination of victims and their children, would be welcome. As prosecutors re-visit their training provision to encompass the 2018 Act, there is also an opportunity to recognise that a presumption in favour of prosecution does not negate discretion and that delicate decisions are required in the appropriate conduct of both pre-trial investigations and negotiations, and also within the trial, including having the awareness and confidence to object to irrelevant and badgering lines of questioning.

#### 7.3.4 After Court

Ashworth (2002: 588) is clear that “the substantive and procedural rights of victims at the stage of disposal ought to be limited.” With notable exception (Hoyle, 2011: 162), the literature on restorative justice predominantly leans away from its use in domestic abuse on the grounds of safety concerns (Daly and Stubbs, 2006) and the pressure to ‘forgive’ (Stubbs, 2007). Seasoned proponents of restorative justice have concluded that, in relation to intimate partner violence, it is “problematic” (Daly and Stubbs, 2006) and that a reconfiguration of restorative justice which improves women’s access to all forms of justice is required (McGlynn et al., 2017). Deployment in its current form as an out of court resolution does not have policy support in England and Wales – although it has been discovered ‘under the radar’ (Westmarland et al., 2017) – or in Scotland (Joint Protocol, 2003; 2013; 2017 stipulates a presumption against alternatives to prosecution) where there is no evidence of its use (Westmarland et al., 2017: 6; Westmarland et al., 2018). However, Crawford (2015: 472) presents an intriguing temporal analysis, which defines restorative justice as a mechanism which:

“seeks to restore the victim’s security, self-respect, dignity and sense of control....the relationship between the past, present and future shapes our understanding of the security around us and directly informs systems and norms of justice.”

This is compelling within the context of victims’ lack of agency and control. However, within its current conceptualisation, it is problematic to countenance a procedure which forces the victim face to face with the perpetrator. Sarah was compelled to engage in mediation with her abusive ex-husband when the criminal charges were marked ‘no proceedings’ and the civil court failed to recognise him as an abuser. She told me:

“The sheriff sent us to mediation, it gets worse. Then I got a letter to say the case was unsuitable for mediation and I phoned and asked why and she told me that until he [accused] completes an anger management course, it’s unsuitable. So, I asked, can you put that in a letter? She said no! A few years pass and another sheriff sends us to mediation. My lawyer said, you will not be up for this, but go along with it....”

Evidently, some creative and far-reaching solutions to re-imagine restorative justice within safe and therapeutic parameters are required before it can appropriately gain favour with agencies supporting victims and feminist academics (McGlynn et al, 2012). Libby explained the difficulty faced:

“Even if someone’s convicted, that the person sentencing really, really understands the impact that coercive control has had on somebody’s life and will potentially have on them emotionally for a long time afterwards.”

Offender programmes are part of the original Duluth model (Shepard and Pence, 1999). Adopting that model, the CHANGE programme received additional resources to support the pilot domestic abuse court in Glasgow (Reid Howie, 2007). There is cross-party support within the Scottish Parliament for adequately resourced perpetrator programmes to support the 2018 Act.<sup>180</sup> However, services are already burdened, as Elaine told me:

“There’s a lot of men on that Caledonian Project, the case workers are rattling through the first eight weeks, trying to get them to the next level because they huv (sic) such an intake.”

Exploring how the court outcome made women feel, it is clear that most felt as impotent after the process as they had during it. There was a sense of deflation and a questioning of whether it had been worth it, as Elaine, whose NHO has not been enforced, sums up:

“I’m still going through it...I’m not seeing anything happening about this, I’m kind-a, waste of paper, total waste of energy.”

There are two ways in which information is important to victims after trial: safety advice and explanations for decisions. One has more urgency than the other, but both are important for longer-term acceptance and understanding. Jenn’s ex-partner was sentenced to a period of imprisonment, against which he appealed. Jenn describes walking freely around town for the first time in months, safe in the belief that he was in prison. One day, she received two

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<sup>180</sup> Debate in Scottish Parliament, 1 February 2018. Transcript available at: <https://www.theyworkforyou.com/sp/?id=2018-02-01.22.0> Accessed 23/02/18.



voicemails, which gave conflicting information. When she could speak to someone in VIA, she was told that her ex-partner had been released from prison:

“He’s been released. And I was like: OK. When? Last week! And I was like, what?! I didn’t know. I felt better knowing that he wasn’t anywhere. And then suddenly there was this weird acknowledgement that he could have been anywhere, for days!”

Beyond this need for basic information upon which to safety plan, there is also a need to understand the outcome and decision-making of the court process. Provision of information is an aspect of the process that is purported to have been addressed,<sup>181</sup> but could be improved (Thomson, 2017: 10), and within which best practice requires little additional effort from practitioners and no legislative or policy change. It is thus frustrating that concurrently to these interviewees voicing an endemic frustration, representatives of police and prosecution were asserting the importance of taking time with victims to provide explanations and give reasons. In giving evidence to the Justice Committee in relation to the new offence, the Procurator Fiscal for Domestic Abuse was clear that:

“We have to manage people’s expectations and explain carefully why we have been unable to take action.”<sup>182</sup>

Barbara told me:

“There was no explanation for why it was brought to lesser charges or why it went off and we didn’t have to give evidence. There’s still a big question mark, I don’t know why.”

A representative of Police Scotland told the Justice Committee:<sup>183</sup>

“If the investigation does not provide a sufficiency of evidence, it is only right that we sit down with victims and explain why there was not a sufficiency of evidence. Although it might be disappointing, it is far better to do that than have a system in which we cannot report, investigate and prosecute individuals for what are described as horrific acts against a partner or ex-partner.”

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<sup>181</sup> VIA; The 2014 Act, s3C introduces a right to case information and s3B imposes a duty to publish a Victims Code for Scotland, available at <https://www.mygov.scot/victims-code-for-scotland/> accessed 19/02/18.

<sup>182</sup> Evidence of Anne-Marie Hicks, Procurator Fiscal for Domestic Abuse to Justice Committee, 6<sup>th</sup> June 2017.

<sup>183</sup> Detective Chief Superintendent Lesley Boal, QPM to Justice Committee, 6<sup>th</sup> June 2017.

Yet, Ayesha, who was raped by her husband, placed under inordinate community pressure and asked at court to give evidence without an interpreter<sup>184</sup> when an administrative oversight meant one had not been ordered, explained:

“I need to live all my life with this now. I’ve been given no justice. I’ve been told I’m right, we believe you, but outcome didn’t say they believe me. I think so nobody believed me. If they believed me, they would have given me justice. It was no easy for me to talk about what happened, to everything...the word I’ve used that I don’t even use that word in my community, I only had that courage because I knew it was the truth...I felt everybody’s bound, They didn’t have an explanation. But why? They didn’t have an answer to my whys. And the answer was to go and make an appointment at the Procurator Fiscal for an explanation. So basically I went for an appointment and I cried and I’m kind of helpless, and I kind of begged, but I was told, that’s it, it’s done. Now live with it.”

To listen to such testimony of an experience of the justice process was uncomfortable, heightened by a personal sense of responsibility as a prosecutor, and is a blight on the will to improve the community response. It highlights the gaps in current training and understanding, despite organisational commitment. To feel such desperation and lack of power at the end of a retraumatising process is harmful and preventable. The rhetoric and the reality remain misaligned.

Despite, this, Jean (ASSIST) talks about striving to bridge the gap: “no matter what happens, we’re still here, we’ll still talk to you, just please don’t be afraid to call the police again.” The impact of a disappointing sentence was also identified by Jean as a challenge to maintaining women’s trust and ensuring their safety and protection in the future:

“It’s quite dispiriting with the outcomes that they’re just like pfff...that was a waste of time, but we know why that is, it’s just the way that the criminal justice system works, that’s why I always say to people, no, keep reporting because the more you report, then the more that’s going on his record and the less likely it is that he’ll get

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<sup>184</sup> In contravention of s3F of the 2014 Act.

admonished and dismissed or whatever. The more likely it is that something will happen to him next time, but that's a skill."

This positive approach to advocacy is important to future safety planning and building trust in the criminal justice response and shows the juxtaposition between the individual and institutional advocacy roles.

Only one of my participants was given the opportunity to give an impact statement to the court and that was because her ex-partner died in prison and she gave evidence at a Fatal Accident Inquiry, rather than a criminal trial. It was clearly cathartic, but the crucial point was that she was safe within the court to give this testimony, as her relationship with her ex-partner had a finality. Likewise, the recent trial in Canada against Larry Nassar, where Judge Rosemarie Aquilina allowed victims to be heard, *after* she had sentenced Nassar to 40-175 years imprisonment.<sup>185</sup> This shows a sensitive understanding of the victims' need to be heard, as Hannah articulated:

"Winning wisnae whether the judge found him guilty or anything like that, it was never about a punishment, I always kind of believed that what had happened...but I wanted it on record, to help other people, to help my kids, to help his girlfriend...as much as I was terrified, I was going to keep the promise I'd made [to myself] and that was that I'd stand there and say what I had to say."

The important thing for Hannah was that being heard was intrinsically linked to regaining agency by 'facing' the perpetrator. Denial of such an opportunity has further compromised her autonomy:

"You cannae just phone up the judge and be like: what's the script, why did you do that? And I think that is a powerless thing and to have that on the back of this kind of case is quite hard."

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<sup>185</sup> <http://www.bbc.co.uk/news/world-us-canada-42811304>, accessed 18/02/18.

Victim Impact statements have been piloted,<sup>186</sup> evaluated (Leverick et al., 2007) and enshrined in Scots law,<sup>187</sup> but are not yet fully exploited (Chalmers et al., 2007). They are distinguishable from their English counterparts (Leverick et al., 2007) which were less favourably evaluated and found less victim satisfaction (Hoyle, 1998; Sanders and Jones, 2011). The data here suggests that the desire to be heard remains in conflict with pressing safety concerns around going to court, giving evidence and speaking up. Eilidh, having experience as both a practitioner and a victim, was forceful, suggesting that reporting to the police and giving evidence was a risk:

“It’s a huge risk factor. If you’re going to put people through the risk factor, if you’re going to expose them, you must protect them and traumatise them in the process with untrained staff and people with no empathy, people with no understanding.”

My evidence suggests that the women who gave evidence and had an ‘opportunity’ to speak felt no more heard than those women who did not. Views of justice varied, which is consistent with other research (McGlynn et al., 2017). The commonality amongst the research participants was a feeling that not only are decisions unexplained, there is often a lack of clarity around when a decision will be made and the consequences. The process remains blurred which thwarts attempts to regain agency. Resigned despondency was common regardless of the nature of the outcome, suggesting that the way they were treated in the process was more important. Respect, safety, meeting basic needs and meaningful discussion would arguably improve victim engagement and increase the likelihood of positive case outcomes. ‘Success’ is subjective and perceptions of a ‘good’ outcome will vary. Thus, contextualising decision-making and augmenting victims’ voices through advocacy and a more empathic response from criminal justice agencies have the potential to rationalise outcomes and instil greater trust in the justice process.

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<sup>186</sup> Pilot in Ayr, Edinburgh and Kilmarnock Sheriff Courts between November 2003-November 2005.

<sup>187</sup> Criminal Justice (Scotland) Act 2003, s14, as amended by the 2014 Act, s23.

## 7.4 Conclusion: Reconciling Agency and Victimhood

“Remember that this is violence in the context of what began as, and may still be, a loving and committed relationship.”

(Johnson, 2008: 49)

The current research data includes only women who had left their abusive partners and were taking steps to move on. Whether the emotional response is love, grief, anger, hurt or trauma, there is intimate knowledge. These emotions ebb and flow throughout the criminal justice process, but they are sharpened in the courtroom. There is a challenge of privacy, which highlights the ways in which the current justice response enables coercively controlling perpetrators to continue to exert power within the process through spurious adjournments; private signs to the victim in the courtroom; and a disregard for bail and preventative orders. The victim is unlikely to know anyone in the courtroom, apart from her (ex)partner. Family members are often witnesses or child carers and unable to be a friendly face in room. Many women spoke of his family being in the public gallery. There is always an audience of strangers. The hopes of my participants relate largely to procedural justice. Their perceived lack of fairness could be addressed by talking through safety fears; providing personalised case correspondence, rather than generic letters; and addressing their ‘whys.’ Recognition of coercive control in the 2018 Act is a welcome first step to challenging the private power/control dynamic between the perpetrator and his victim, but it does not address procedural justice and abuse of process. Moreover, it is likely that criminal charges of coercive control will prosecute past conduct; not the sophisticated, manipulative control which plays out *through* the court process.

Despite being fractured by abuse, the intimacy of the family dynamic arguably withstands a phone call to the police, in many cases. My interviewees were still in a process of recovery, at least a year or more after that initial call to the police. For some, there was still contact with their ex-partner due to unrepentant breaches of non-harassment orders, living a couple of streets away, or because of child contact arrangements. While there is still some link – and

for many that is the court process – the internal feelings associated with being part of that relationship may be influential. Walking into a courtroom, where he is the only person she knows, to talk about family time (no matter how awful) can be more powerful than the court’s authority.

Agency has been conceptualised as the extent of an individual’s personal space, or “space for action” (Lundgren, 1998, revived by Kelly, 2003). Westmarland (2015) develops this by describing psychological abuse in terms of as a bubble or net. For women experiencing psychological abuse, the limits of such space for action are more constrained and the bubble smaller. This endeavours to capture the complex fluidity and gendered nature of the public/private and highlights the inadequacy of the rhetoric which places domestic abuse “behind closed doors.” She describes a constraint that transcends our understanding of physically public and private places and underscores the gender imbalance. For Westmarland, physical integrity is central to agency, and women in abusive relationships have much less personal space than others. This is a useful tool to understand and visualise the ways in which psychological abuse constrains agency. Describing it as a private crime which can be nullified by a public response is an over-simplification and misses the gendered nature of the offending to suggest that opening the door will expose – and by implication, stop – offending behaviour. Thus, the conceptualisation of a bubble is helpful, both in terms of its recognition of the spectrum of agency and its challenge to the public/private tension. However, describing agency as completely integral to an individual does not capture every aspect of the ways in which agency is sought and thwarted within the justice response, where external drivers contribute.

The private control, the public control and the inner fight for control can thus be individually conceptualised as layered, yet distinct. It is difficult to conceive of a situation where this could lead to any outcome other than tension. The emotional charge is not easily diluted, and the practical outcome is seemingly irreconcilable positions, pitted against each other. Ways in which this might be mitigated are explored in the concluding chapter.

## Chapter 8: Conclusion

“There is one universal truth, applicable to all countries, cultures and communities: violence against women is never acceptable, never excusable, never tolerable.”

(United Nations Secretary-General, Ban Ki-Moon, 2008 quoted by Scottish Government in *Equally Safe*, 2016c)

### 8.0 Preamble

This thesis has explored how victims of domestic abuse in Scotland experience the criminal justice process. It has taken a holistic view from an initial report to the police until final disposal of the case, challenging the divide between civil and criminal justice processes. Drawing on in-depth qualitative interviews with victims of domestic abuse and those employed within agencies which support them, as well as significant experience as a prosecutor, this thesis questions fixed identities which assume victims and support workers as two discrete categories and distinguish the researcher as a neutral professional.

By adopting a temporal analysis, this thesis has probed the gap between the legislative and policy commitment to eradicate domestic abuse as a form of violence against women, and women’s narratives of ongoing abuse; traumatic encounters with the justice process; and an overwhelming feeling of not being heard. In part, this can be attributed to a policy tendency to focus on what I have called the punctuation marks in the process – a call to the police, the taking of a statement and the trial – and not the waits in between. It can also, in large part, be attributed to the misconstruction of the public/private nexus and a presumption that reporting domestic abuse, as a crime, makes it public and makes it stop.

I have argued for closer alignment between the criminal and civil justice responses in cases of domestic abuse and for a more empathic justice response which recognises and responds to the complex reactions experienced. I have identified the tertiary victimisation of waiting and challenged the conceit that women reporting domestic abuse receive a predictable and

consistent service across Scotland, which improves their safety. The corner-stone of Scotland's progressive approach lies in its gendered understanding of domestic abuse, reflected in its definition, policy, strategy and agency responses. However, this thesis has found that continuing gender inequality within criminal justice structures, mean that women are institutionally disbelieved. Uneven support-service provision impedes Scotland's potential to be a leading light in dealing effectively with domestic abuse.

## 8.1 Reflecting on the Research Aim and Method

The aim of this thesis was to consider the evolving role of the victim in the criminal justice process through the lens of the domestic abuse victim - one of the most progressive areas of law and victimology - and examine if there is a gap between perceptions of policy and legislative progress and the reality of victims' experiences.

This research considered individual victims' responses to and experiences of the criminal justice process alongside the campaigns on their behalf and the state response. In outlining the methodological approach in chapter four, I committed to review the efficacy of my research findings. In this conclusion, I therefore try to provide both practical and theoretical analysis of the findings and their implications.

Recognising the sensitive nature of this topic and possible vulnerability of participants, I chose a qualitative approach. I interviewed 34 women about their experiences of being a victim of domestic abuse; of supporting others who had been victims; and those who had experienced both. I had the implicit advantage of already knowing many of the advocacy support workers, having worked with them closely for several years. Gatekeepers and colleagues became participants and my fluid, 'snowball' approach to sourcing participants yielded a relatively high number of participants. I adopted an open, semi-structured style of questioning, deliberately avoiding leading questions or a lawyer's temptation to clarify and re-examine on certain points. For many, it was a first (cathartic) opportunity to tell their whole story, uninterrupted, with only their own filters. The ensuing interviews were full of honest reflections and descriptive imagery.

A limitation of this research is that I have not interviewed women who were not supported through the justice process. The reasons for this are outlined in chapter four. Nevertheless, it



means that this research does not reflect the experiences of those who have experienced domestic abuse but have failed to engage with the justice response, withdraw from the process, or have been compelled to attend court. They represent a significant proportion of domestic abuse complainers and contribute to cultural barriers within the process invoked by professional frustration when ‘they don’t speak up.’ This is an area worthy of further research. However, there are transferrable lessons learned in this thesis from those who have experienced the process and who remind us of some basic failings in delays, lack of information or explanation, confusion, fear, reluctance, compromised safety and disappointing outcomes. Thus, the interviews undertaken for the current research provide data which has wider import in encouraging engagement from disenfranchised victims of domestic abuse.

I anticipated and addressed researcher effect, conscious of my professional link to the investigation and prosecution of domestic abuse. My participants spoke critically, honestly, and sometimes favourably, about my colleagues, peers and friends. I have reflected throughout the thesis where researcher-effect has informed my approach. I have not, for example, included the views of police officers, prosecutors or sheriffs: as an employee of COPFS, any research conducted as an insider of the organisation and commenting in detail on the role of the prosecutor would have required sanction of my employer. The absence of detailed analysis of the role of the Procurator Fiscal is the corollary of being able to produce critical, independent research which makes a meaningful contribution. There remains, however, a need for research on the response of formal actors within the justice system. I reflected in chapter four on the merits of a mixed method approach. In the current research, the context to my interview data came from the detailed analysis of my timeline. A broader project could follow case trajectories quantitatively through the process, augmented by women’s narratives and exploring sentencing options and implications. There is a lack of data reflecting the whole Scottish experience, yet the distinct jurisdiction, multi-agency relationships, devolved Parliament, single police force and the introduction of a specific offence of domestic abuse, make Scotland an interesting case study.

In addition to considering the impact of my professional role on the research, I have also reflected on the impact of the research on my professional approach. Many of the research findings echo lessons learned from the pilot domestic abuse court in 2004 which creates a frustrating sense of going backwards. However, recent developments are heartening and there is some government commitment to reduce victims’ journey time through the criminal

justice process. The women I interviewed taught me to look at things differently and I now see potentially negative consequences in well-meaning efforts. For example, I recognise that the times when a victim needs communication do not necessarily coincide with what practitioners see as key decision points and that when she attends court, it is not always the end point. For some, it is still the middle of their story. This impacts on how prosecutors should approach communication in and out of the courtroom.

## 8.2 Key Findings

“it may appear that the needs of women as voiced by feminist campaigns have been so imagined. But have they? A deeper analysis might suggest that these imaginings have been the needs of the criminal justice process itself alongside those that inhabit this space”

(Walklate, 2008: 49)

The driver for this research was professional frustration that the law and policies being implemented in victims’ names did not always prioritise their practical and emotional concerns. As a prosecutor in court, I felt that I was part of the problem. I hope that this research provides part of the solution. The progress in Scotland to address violence against women in general, and domestic abuse in particular, should not invoke complacency. The risk attached to the relatively rapid pace of change since devolution is that an infrastructure is not in place to support basic practical and safety needs. Not only does this compromise the legislative and policy intent, it also has the potential to jeopardise women’s safety. The 2018 Act commits to privileging women’s accounts and to recognising the myriad ways in which domestic abuse is perpetrated so that women may finally be able to tell their story. Yet the reality today is that women routinely do not even feel safe travelling to or from court or within the building.

This thesis presented three main findings chapters: an exploration of the role of the victim advocate; victims’ experiences of waiting for and at court; and the impact on victim agency through ongoing coercive control during the court process.

The victim advocate found unequivocal support from the research participants, which is consistent with the academic literature (Hester and Westmarland, 2005; Robinson, 2006a; Brooks and Burman, 2017). This research has highlighted the limitations to the provision of advocacy support in Scotland. Formal advocacy services exist in pockets and whilst there are trained IDAAs within many grassroots organisations,<sup>188</sup> including Women's Aid groups, each organisation translates the role slightly differently in its service provision and information-sharing. Women's experiences are diverse from the outset. A national advocacy scoping exercise identified this variance and the range of potential models (Blake Stevenson, 2017: 47). The ways in which domestic abuse and other forms of gendered violence are reported differ and it is unlikely that a 'one-size-fits-all' approach is appropriate. Limitations to the ASSIST model which have emerged in this research (reduced attendance at court; lack of clarity by some police officers of their role; reduction in referral rates; lack of direct contact between IDAAs and prosecutors) are all examples of a dilution of the original service, rather than flaws in the model. Revisiting the original evaluation (Robinson, 2006a) is a reminder that these were all key components of ASSIST's approach. The issue thus appears to be one of stretched resources, which has affected services supporting specialist courts more widely (Bettinson, 2016a). The fact that ASSIST's remit has extended into courts which do not adopt a specialist approach may also have bearing. Nevertheless, the foundation of the ASSIST model which was robustly and positively evaluated (Robinson, 2006a), has a strong track-record. Its institutional advocacy role and close relationship with the formal criminal justice partners make it, as shown in chapter three, a bridge between the voluntary and statutory sectors. It is this contribution and established position which should endorse its approach as a national model in relation to domestic abuse. Supporting women is done in a range of humbling and innovative ways, but advocacy is designed to help women navigate the criminal justice process. ASSIST broadly fulfils this remit in relation to domestic abuse, but service provision could be improved, as this thesis has shown. For example, apart from more consistent attendance at court, consideration ought to be given to supporting women who are reporting historic abuse or a catalogue of coercively controlling behaviour, earlier in the process.

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<sup>188</sup> For a map of advocacy provision in Scotland, see Blake Stevenson (2017), available at: <http://www.gov.scot/Resource/0052/00523297.pdf> Accessed: 01/07/18.

The academic literature and the current research findings challenge the status of risk assessment tools. A well-intentioned and potentially valuable introduction to this field in Scotland, they are a means of prioritisation; a product of a multi-agency approach; the introduction of MARACs; and a commitment by victim advocates and support organisations to facilitate more robust safety planning. This research has shown that IDAAs in Scotland use the RIC carefully and intuitively. They do not consider it an actuarial tool, but rather a means of initiating discussion with women. The score takes account of a woman's perception of her own risk, filtered by the IDAA's judgement. However, three findings from this research suggest disparity in the application of risk assessments and a lack of consensus on their purpose. First, there was evidence of RIC scores being used as a managerial tool to show a reduction in risk, reflecting the climate and financial pressures within which many organisations operate and contradicting the person-centred ethos of advocacy (Coy and Kelly, 2011; Howarth et al., 2009; Robinson, 2009). Second, information-sharing and use of risk assessment information are not consistent between agencies, which reflects the findings of the national scoping exercise (Blake Stevenson, 2017: 47). Third, there was significant concern, borne out by the limited academic research (Ariza et al., 2016) and the lack of face-to-face police training thus far, that police officers are not adequately equipped to conduct the DAQ. Asking sensitive and probing questions of women in their own homes, at a point of crisis, is practically difficult and ethically questionable if they are not properly trained. Moreover, depending on advocacy provision within the area, the same questions could be repeated within 24 hours. The professionalism of the IDAA is compromised when women feel harassed with repetition of the same questions. The risk assessment is designed to improve women's safety by assisting victim advocates and providing a referral mechanism to the MARAC. These benefits are compromised when there is uneven service provision of both advocacy and MARACs. In court, the perceived legitimacy, and importance, of the RIC outcome, where it is available, is unclear. There is a need for specific Scottish research on the use and timing of risk instruments in relation to domestic abuse and how they are understood by the prosecution and judiciary.

Chapter six explored the emotional responses that women experience during the criminal justice process. My analysis showed that their focus is not always on the punctuation marks

in the process, but that their interaction with criminal justice agencies and support workers is often geared towards key dates. In between, they face long, uncertain waits. This waiting is largely unrecognised and unexamined. I have argued that the trauma attached to such tense and protracted periods of waiting leads to what I have called tertiary victimisation. When women are asked by the police to answer questions or provide a version of events in the small hours of the morning, in their own home, in the immediate aftermath of a crisis, with no real idea of what will happen next, it is unsurprising that they find the situation stressful. Distracted by the emotional ramifications of what they are experiencing, they do not appreciate that this may be their only opportunity to provide a statement. This thesis found that women described a situation in which the police remained incident-focused, whilst they struggled to come to terms with long-term abuse.

The research participants painted an anxious and alienating experience of court. They described a lack of consistency between the civil and criminal courts, particularly in relation to special measures, and could not understand why there was not a more joined-up justice response. Court waiting rooms are described as over-crowded; sensitive case information is discussed loudly; chairs are uncomfortable; child-care provision is lacking; information-provision is slow; waiting is tortuous; rules relating to expenses are inequitable for those who work night-shift; and the public areas around the court leave them feeling vulnerable. Once in the courtroom, the witness box is cramped; there is a requirement to stand for a long time; questions are potentially re-traumatising; the presence of a court-reporter causes distress; and there is little objection to cross-examination which goes beyond testing the evidence to an outright attack on character. Having fulfilled a responsibility as a Crown witness, concepts of the 'ideal' victim are re-enforced as she is potentially judged to be not sufficiently 'vulnerable' (despite her 'deemed vulnerable' status) if she returns to the courtroom to watch the rest of the trial from the public benches. Afterwards, many are left with unanswered questions. It was clear to me that they had little understanding of the purpose or effect of the justice response, despite their involvement in it.

Where a victim is engaged in the process and it is her advocate's opinion that she will attend court, if required, to give evidence, there should be scope for a standby arrangement. If advocacy services were resourced to provide a safe and therapeutic waiting area, victims and their children could be on standby. The discomfort of the wait could be reduced, even if the

wait itself is inevitable. Facilitating more police standby arrangements to reduce the burden on the waiting area would, in the short-term, remove a physical barrier, as it would reduce current over-crowding. However, this does not benefit women attending civil court hearings. Long term, significant revision of court time-tabling is needed to reduce time waiting for trial and waiting time at court.

There is no single point at which the process fails, just as no two victims' journeys are the same. Many developments aimed to improve victim participation in the adversarial process are legitimately described as, "tinkering" (Walklate, 2004; Robinson, 2015). The legislative recognition of victims in Scotland in 2014 was significant, but limited in its reach, as this thesis has shown.<sup>189</sup> Adopting a holistic view of the process distinguishes the seemingly small things. Prosecutors taking a couple of minutes ahead of cases which do proceed to a trial diet to introduce themselves to the victim and other witnesses is such a small step. Whilst it is intuitive to many, it is not a universal practice. Similarly, making the seats in the waiting area more comfortable, allowing witnesses to be seated giving evidence and applying the same expenses' rules to day-shift and night-shift workers attending court are quickly achievable. There are also examples of current policy not achieving its aim. For example, witnesses attending court ought to be guaranteed safety, victims should be provided with a clear guide and the process should be transparent and understandable. These are all, to greater or lesser extent, "tinkering," but can make a tangible difference.

The persistent flaws in an over-burdened justice system illustrate that the value of advocacy support is thwarted by the broader criminal justice response (Blake Stevenson, 2017: 55). The insensitivity of a police officer, a prosecutor, a bar reporter, a sheriff, or a solicitor may be dismissed as a 'blip.' However, for each individual who meets such an insensitive approach, the apparent sweep of progress provides little comfort and the whole justice response bears responsibility for her re-victimisation. Without a cultural shift, this picture will not change. Thus, the key contribution of the advocacy role today lies in augmenting victim agency and helping victims to better understand the process and their own emotional responses.

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<sup>189</sup> As outlined in chapter two, innovative practices include: problem-solving courts (Centre for Justice Innovation, 2016; 2017) and greater use of electronic monitoring (Graham and McIvor, 2017; Arenas, 2017).

### 8.3 Analysis of the Findings, I: Behind Glass Walls

There have been manifest policy and legislative changes in Scotland since domestic abuse was simply behind closed doors. This thesis has charted the progress which has been made to recognise domestic abuse as a specific offence in Scots law, potentially allowing women to tell the story of their whole lived experience of abuse. Recognition of a continuum of abuse within intimate partner relationships, rather than focusing on incidents of violence, sets Scotland's approach apart and signals a societal understanding of how domestic abuse is perpetrated and a corresponding public condemnation. However, it necessarily remains retrospective. In adducing evidence of criminality, the court process looks back. In the event of a conviction, it may look forward to predict risk of re-offending and take that into account in passing sentence.

The findings of this research demonstrate that recognition of a continuum of abuse fails to identify continuing offending alongside and throughout the court process. The women I interviewed provided numerous examples of sinister, coercively controlling behaviour throughout the court process: during child contact; with the bar reporter; at the police station; in the child welfare hearing; in the corridors of the court; and during the trial. These women did not feel safer by reporting criminality. Reporting to the police, ostensibly bringing the offending behaviour out into the open, did not stop the ongoing abuse.

Reflecting on this within the context of policy developments and the strides made by the feminist campaign, it becomes easier to situate these findings in the enduring structural inequalities within the court process and the sentiments of these women that they did not feel that they had a voice. Recall the data findings in chapter six which recorded women's sense that they had not been heard, that *his truth was stronger than mine* and the perception that, no matter what happened, *I was not going to be believed*. This is consistent with the literature in chapter two which highlights structural barriers to female credibility (Jordan, 2004a; 2004b; 2015; Beard, 2017).

This shows the complexity and incompleteness of the public/private dichotomy. A public criminal justice response to domestic abuse means that the dynamics of abusive behaviour and gendered inequality are duly recognised. Yet it also means that women face the challenge of talking publicly, and in fairly prescribed ways, about intimate aspects of their

lives and there is an expectation about the way in which they should present themselves (Stark, 2007), perpetuating unattainable expectations of an idealised victim (Christie, 1986). Moreover, the private abuse which she has reported continues while in front of court practitioners and is not understood. Within the context of feeling unheard, these are potent barriers to justice. Women's perceptions of the invisibility of the crime and the inaudibility of their voice lead to feelings of dis-engagement and compromise their ability to support the prosecution.

The gendered and unrecognised nature of this barrier is not dissimilar to the glass ceiling which second-wave feminism highlighted 40 years ago (Fielding, 2018; and appendix one) as a seemingly invisible barrier to women progressing equally in the workplace. The data from this research suggests that women who have experienced domestic abuse are living in a situation that can be described as behind glass walls: the abuse is both publicly recognised and privately ongoing and imperceptible. It is "hidden in plain sight" (Davies, 2014). It goes beyond Kelly's "life space" or Westmarland's (2015) "bubble,"<sup>190</sup> to encompass the responsibility society bears for perpetuating continuing abuse in its gender inequality. The concept of glass walls reflects a condition that is not easily penetrable and remains grounded in inequality, both personal and structural. At once, women are offered support and encouraged to report and, at the same time, they report *feeling crazy* because ongoing abusive behaviour is not acknowledged. This thesis has highlighted that victims in the court process have numerous responsibilities such as attending diets of court; providing information; answering questions; responding; and waiting. Concurrently, they are juggling work, family expectations and commitments and counselling to deal emotionally with their experience. Those with children are negotiating child welfare hearings, contact centre visits, school, homework, clubs and the pressure to keep everything 'normal.' It is a personal commitment of time and emotion which is insufficiently recognised by criminal justice personnel. The following section explores how the rights which correspond to those responsibilities might be more meaningfully realised, but first it is important to address the issue of training.

This research has exposed the barriers to experiencing justice which are imposed by the intimate relationship between the victim and the accused (Johnson, 2008: 49). A number of the research participants in the current study referenced how ill-equipped they felt to go to court and how *it wasn't like on T.V.* Legal dramas influence expectations of encounters with

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<sup>190</sup> For a discussion, see chapter two above.



‘truth’ and ‘justice’ (Reiner, 2002). In reality, court exposes the complexity of talking publicly about intimate details where hurt, shame, guilt, fear, trauma, anxiety and anger are exposed. The rules of evidence, the requirement for corroboration, the statutory definitions of crime and the need to protect the rights of an accused person mean that many victims’ expectations will not be met. Rhetoric which puts them at the heart of the process paints an attractive picture, but is unhelpful and misleading. Nevertheless, there are practical ways in which the current system could be reconfigured to better reflect their complex needs.

This research has found that many victims perceive that, in relation to their experiences of domestic abuse, many practitioners *still don’t get it*. The importance of an appropriate response was underscored by the victims and the workers, particularly by Megan when she described the sheriff’s realisation of what she had experienced as him *looking like his wig was going to fall off*. Formalised judicial training in Scotland is relatively recent and internal. The webpages of the Judicial Institute remind us that, “judicial training is judge-led, judge-devised and judge-delivered.”<sup>191</sup> Whilst the judiciary are the authors of their own training, it is a challenge to achieve Jamieson’s ideal of, “fostering critical engagement [with the judiciary] with social science research” (Jamieson, 2013: 250).

The imminent introduction of face-to-face training for police officers, by *SafeLives*, is a positive step. Prosecutors receive accredited training on the dynamics of domestic abuse<sup>192</sup> and will receive further instruction on the 2018 Act and the components of coercively controlling behaviour. The current training programme focuses on the dynamics of abuse, awareness-raising of the IDAA role and some practical help on how to put a statement to a reluctant witness. However, it does not address some of the issues that have arisen from the current data. The training gap was highlighted by Ayesha’s experience when she told me that *after what had happened, it would have been hard to phone me*. The complexity of human responses makes these cases hard to deal with. Prosecutors and police officers must respond sensitively and appreciate the importance of their approach to the victim’s experience of justice. Training should underscore that it is possible to respond empathically without having an answer or a ‘fix’ to every question and to accept the discomfort of encountering anger, disappointment and grief.

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<sup>191</sup> <http://www.scotland-judiciary.org.uk/59/0/Judicial-Training> Accessed 30/08/18.

<sup>192</sup> See appendix one.

Chapter three highlighted the increased procedural rights afforded to victims by the 2014 Act. It also records the ongoing debate around the justification for a presumption in favour of prosecution. In light of the recent public letter by Rape Crisis which criticises a shift in Crown policy to compel victims of sexual offences, it is clear that this remains a difficult issue which invokes debate around agency and victimisation. The legislative provision for a victims' right to review is a novel step. It is the first substantive input by individual victims in the Crown deliberation of the public interest. This leads, however, to a new level of scrutiny to the role of the prosecutor in decision-making, which current training programmes underestimate. If procedural justice is to be met through listening, responding and communicating, prosecutors need adequate training to distinguish the range of emotions experienced by victims. Often, a victim whom they have dismissed as 'reluctant' could better be understood as fearful.

Within the criminal court, the adversarial process should not allow cross-examination of witnesses to go beyond testing the evidence and descend into an attack on character, as was the experience of many of my research participants. In fact, there is research to suggest that specific guidance on questioning and cross-examination not only benefits witnesses but improves the accuracy of their testimony (Wheatcroft and Ellison, 2012). In addition to training which raises awareness and understanding of domestic abuse, further training is needed on how to prosecute and defend domestic abuse cases in a sensitive way.

Prosecutorial advocacy training must address how to deal sensitively with questioning, recognise when it is appropriate to persevere and when consideration needs to be given to 'next time' and when (much more than is currently the case) it is appropriate to object to defence questions.

The 2018 Act is the first legislative recognition of domestic abuse as a continuum, but there remain evidential barriers, as discussed in chapter three. The findings of this research suggest that current legal training on domestic abuse falls short. The systemic, gendered barriers to women's evidence being heard appropriately in the courtroom and their views being represented prior to trial, suggest that Schneider's (2000) call for mainstreaming of gendered abuse within the law degree was insightful. In Scotland, gendered abuse potentially has implications for many core subjects, from jurisprudence to family law.

For practising solicitors there is scope, as mooted by Lord Carloway (2015) to invite greater specialism and 'ticket' solicitors who are trained in domestic abuse and gender violence. I

envisage a more holistic approach in which solicitors specialise in domestic abuse and gendered violence, rather than in civil or criminal law. Civil family law specialists ought to understand the dynamics of domestic abuse and work more closely with the prosecutor to appreciate the implications on their case of concurrent criminal proceedings. This is perhaps something which the Scottish Law Commission will consider in their review of civil family law and abuse (Scottish Law Commission, 2018). Moreover, the prosecutor should be aware when there is an ongoing civil case and should ensure that motions made in the criminal case do not directly contradict the intent of the civil court. For example, a motion for special conditions of bail ought to take cognisance of child contact arrangements, and vice versa. Thus, the system could be more joined-up for victims, witnesses and accused, so that it does not *feel very unstructured*. Whilst this approach would mitigate much of the current breakdown in communication, it would not resolve the need identified by one participant and echoed in other research (Thomson, 2017) for an *over-seer*. Within the current system, this can only be fulfilled by a victim advocate or a prosecutor. The findings in chapter five reflect on the advocacy workers as ‘parvenus,’ as their role is not yet recognised as a formal part of the process. Indeed, many support agencies protect their autonomy. Prosecutors acting in the public interest can improve their victim engagement, but it is unlikely that they can fulfil this role. The scoping of a national advocacy service will hopefully spark this debate and prompt further research into the feasibility of legal representation for victims (Raitt, 2010; 2013). This need not be legal reform to the court process, but could be representation at the earlier stages of the process, as part of enhanced advocacy support. These measures may lead to a shift in how the court hears evidence from victims of domestic abuse and their children.

#### 8.4 Analysis of Findings, II: Creating an ‘Intimate Public’

“In an intimate public one senses that matters of survival are at stake and that collective meditation through narration and audition might provide some routes out of the impasse and the struggle of the present, or at least some sense that there would be recognition were the participants in the room together.”

(Berlant, 2011: 226, quoted by Walklate et al., 2015)

This conceptualisation of an ‘intimate public,’ which Walklate et al. (2015: 3) adopted to describe the public grief of mourners at the repatriations of soldiers through Royal Wootton Bassett, is helpful. At its core is the way it bridges public and private lives, rather than merely a description of private grief aired in public. For Walklate et al. (2015) it was an accurate description of a witnessed phenomenon. Translating this for court, the challenge is to create an ‘intimate public’ within which victims can safely and confidently give evidence. It imagines a means by which dignity can prevail over the noise and where the court setting can better serve victims and witnesses, thus weakening the magnetic pull of the perpetrator. It does not mean an outpouring of emotion in the court (Hoyle, 2011). It requires respect for the victim and a sense of purpose within the victim, which is stronger than the control of the accused.

The starting point needs to be in addressing tertiary victimisation *before* victims reach the courtroom. Waiting times need to be reduced either by greater application of prosecutorial discretion, so that fewer cases reach court, or through greater resources to facilitate more case preparation and court time. The Scottish Government announcement in August 2018 of increased funding for SCTS and COPFS ought, in principle, to help. It will pay for additional permanent staff and carries a responsibility to reduce the length of individual cases, particularly those involving children and vulnerable victims and witnesses. Where waiting is inevitable, it needs to be clearly explained and a shift is needed to move away from orienting all communication around key decision points. In this, VIA plays an important role, but the current research suggests that there is confusion and a lack of understanding of their remit by victims. Many of my interviewees referenced receiving no contact from the Procurator Fiscal’s office or thought that they had been called by Victim Support when it was clear from the context that they had, in fact, been contacted by VIA. Without greater scrutiny and appraisal of customer understanding of their role, the additional funds for COPFS staff (including VIA) will struggle to improve communication. This research showed that victims would value direct communication with the prosecutor. Expanding provision of advocacy support and encouraging grassroots engagement between the prosecution and IDAAs, there is scope for common understanding and waiting to hold less anxiety. The findings of this research resonated with descriptions of women under extreme pressure in the build up to court. The levels of anxiety experienced by many are typically under-recognised by criminal justice actors. In fact, there is a great deal they could contribute to dispelling some of the

pressure by improving communication with victims and their advocates and managing the wait. The current focus on the trial as a by-word for the justice response should change.

Reframing the victim narrative to engage service and consultee rights appropriately and enable victims throughout the process is a way to start to foster an intimate public where the court is attuned to an individual victim's emotional response. This will not be easy.

Recognising the continuum and power-play in decision-making; understanding the ebb and flow of emotion; challenging the 'ideal' domestic abuse victim; and unpacking the multiple levels between public and private are all critical to realising this approach.

The challenge of the criminal justice process is to create a safe and empathic response in which the impact of waiting is recognised and repeat victimisation is minimised. Within this thesis, agency has been understood as including three key elements: the capacity for informed choice, freedom from further criminal conduct and a means to be heard.

The core of victims' rights, particularly victims of domestic abuse, is their capacity for agency within the court process. Without this foundation, the promise of the legislative and policy intent will not be realised. A "fundamental vision of equality" (Schneider, 2000: 229) is a system which recognises the predominantly gendered nature of domestic abuse (Equally Safe, 2014; 2016c), whilst creating everyone equal before the law (Joint Protocol, 2003; 2013; 2017). Thus, the promise of the 2018 Act is that it will encourage a deeper understanding by practitioners of the continuum of violence; the continuum of power; and, thus, foster a better ability to tell the story. Yet, in reality, there is no player within the traditional adversarial process whose formal role is to prioritise the interests of the victim. In this context, the role of the victim advocate is to act as a conduit for victims' voices and an assertion of their greater agency. This thesis found that there was scope for improved communication with criminal justice partners at the micro-level to improve understanding of both the court process and progress in individual cases. In relation to some agencies, this could extend to instilling confidence in them to support women to report to the police and engage with criminal justice partners. However, it also found that support was key to women's resolve to navigate the court process. The efficacy of the 2018 Act is arguably contingent on consistent advocacy provision across the country. This research has shown the limitations of victim advocacy, but the potential of the victim advocate to augment women's agency is powerful.

## 8.5 Beyond Glass Walls: Using Procedural Justice to Bridge the Gap

The ‘glass ceiling,’ first coined in 1978, has been described as “the phrase that changed feminism” (Fielding, 2018). Its resonance with working women made it popular and powerful. It did not solve the problem, but identified a barrier, which women could relate to and coalesce around.

Similarly, describing women’s experience of reporting domestic abuse as living behind glass walls does not solve the problems inherent in the justice response, but it highlights the ongoing gendered barriers within the court process, including the ways in which their voices are still not always heard and the ways in which coercively controlling behaviour continues to be perpetrated during the criminal justice process. Beyond glass walls, there is scope to recognise the complexity and continuum of public awareness and private experience of domestic abuse and to meet the implicit challenges.

Chapter three reflected on progress in Scotland, from the opening of the first refuge to legal recognition of domestic abuse as a crime. Policy in Scotland recognises domestic abuse as gendered abuse, whilst the Joint Protocol (2017) defines domestic abuse, in legal terms, which ensures that it will be investigated and, where there is sufficient evidence, prosecuted, irrespective of the gender of the complainer or the accused. This is the right approach. Whilst law must be universal, the policies supporting the broader infrastructure can recognise that domestic abuse is predominantly gendered offending. By this, I reiterate that I mean it is largely perpetrated by men on women, and gender imbalances within society, and within the justice system, help to perpetuate men’s behaviour.

Scotland’s outlook on tackling domestic abuse is cautiously optimistic. The 2018 Act provides a potential opportunity for women to relate the narrative of their experience. Further, the 2018 Bill<sup>193</sup> points to provision for ‘deemed vulnerable’ witnesses to give their evidence prior to trial, out of the courtroom. The recommendations of the advocacy scoping exercise, in relation to legal advice for victims and ongoing discussion on a national advocacy model, provide potential for victims to become better informed and more engaged. The work of the *Equally Safe* implementation group promises to challenge structural inequality.

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<sup>193</sup> Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill 2018: see chapter three and appendix one.

Nevertheless, this thesis has argued that whilst legislative and policy progress is welcome, it cannot reach its potential until women feel safe attending court and able to engage in the process. Court closures remain a key impediment to greater specialism, closer civil/criminal links and shorter waiting times, which are arguably the most influential, practical changes needed to improve victims' experiences.

Reflecting on the timeline and the passage of 40 years since women first recognised the glass ceiling, it is likely that structural inequalities could take several generations to eradicate. Facilitation of a new kind of feminist activism through social media platforms, including campaigns such as #MeToo, ought to help. Presently, however, there are small steps which could be taken to improve victims' experiences of the justice system. I have identified some priorities, including consistent advocacy services, support to report historic abuse, parity of expenses, allowing witnesses to sit during evidence and research to learn more about risk assessments and victim engagement with VIA. The most important challenge is to mitigate the trauma of waiting through improved communication prior to court and physical alterations of the court waiting area.

This thesis has advanced the concept of tertiary victimisation as a way of understanding the impact of waiting and has challenged criminal justice agencies to shift their focus and recognise the potential trauma in waiting. Building on the literature around secondary victimisation and known theories of women's lack of agency and barriers to justice, the findings have analytical generalisability in terms of how secondary victimisation, women's lack of agency and barriers to justice are understood and conceptualised to extend to the tertiary victimisation of waiting.

A key finding of this research has been that the length of a wait is experienced subjectively. What may seem a relatively short wait, may *feel* long to the victim. It is in waiting that there is greatest potential to augment victim agency, where there is a relationship with a support person or advocate.

This thesis has shown that there is an enduring gap between public perception of progress in recognising domestic abuse and victims' individual experiences. I have argued that the public/private dichotomy is an unhelpful rhetoric in relation to domestic abuse and that justice agencies need to take a more holistic approach, through closer alignment of the civil and criminal justice response and, more simply, by recognising victims' whole experience of the process. Right now, procedural justice may hold greater hope for victims than legislative

and policy change. The role of the victim advocate is pivotal to achieving this by improving safety, ensuring informed decision-making and enhancing women's agency.



APPENDIX ONE: A TIMELINE OF SCOTLAND’S RESPONSE TO DOMESTIC ABUSE

International / England & Wales		First Victim Support starts in Bristol		Domestic Violence and Matrimonial Proceedings Act 1976 <ul style="list-style-type: none"><li>- Police given increased powers of arrest</li><li>- Greater court protections for abused women</li></ul>			UN Convention on the Elimination of all forms of Discrimination against Women (CEDAW) (Dec 79)	Domestic Abuse Intervention Project - Duluth Minnesota (1980) <ul style="list-style-type: none"><li>- Introduction of Duluth model: individual and institutional advocacy</li></ul>	Victim Support publish National Code of Practice and hold first national conference <ul style="list-style-type: none"><li>Women's Groups recognise International Women's Day (8 Mar)</li></ul>	
Public Policy: Reports and Initiatives										
Policy Implementation										
Case Law										Duffy v HMA 1st prosecution of marital rape
Year	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982
Legislation					Housing (Homeless Persons) Act 1977 <ul style="list-style-type: none"><li>- Women fleeing abusive partners could be identified as homeless and be re-housed (in force in Scotland Apr 78)</li></ul>				Matrimonial Homes Act (1981) <ul style="list-style-type: none"><li>- (Un)married women can seek exclusion of an abusive partner from the matrimonial home (in force Sep 82)</li></ul>	
3rd Sector Initiatives / Conferences										
3rd Sector Implementation	Women's Aid refuges open in Edinburgh and Glasgow			Glasgow Rape Crisis opens  Scottish Women's Aid National office opens in Edinburgh (May 76)		Edinburgh Rape Crisis opens (Jul 78)			Hemat Gryffe Women's Aid, established in 1981 in Glasgow, was Scotland's first Asian, Black and Minority Ethnic Women's Aid group	
Academic / Media		Scream Quietly or the Neighbours will Hear - Erin Pizzey <ul style="list-style-type: none"><li>- Seminal feminist text (Apr 74)</li></ul>			Pilot British Crime Survey - Sparks, Genn and Dodd <ul style="list-style-type: none"><li>- The first quantitative analysis of victimisation in the UK</li></ul>	The phrase 'glass ceiling' is first used - Marilyn Loden (May 78)	Violence Against Wives: A Case against the Patriarchy, Dobash and Dobash (1979) <ul style="list-style-type: none"><li>- First study of domestic abuse in Scotland</li></ul>			First British Crime Survey Hough and Mayhew <ul style="list-style-type: none"><li>- National victimisation study (became annual in 2001)</li></ul>

International / England & Wales			UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Nov 85)	CPS starts operating - created through the Prosecution of Offences Act 1985	Home Office initiates core funding for Victim Support (Apr 87)	Victim Support publishes the leaflet for all victims of crime - for use by front line police officers		UK Govt publishes Victims' Charter for England & Wales - first attempt to bring together all elements of criminal justice response	Centre of Women's Global Leadership launches 16 days of action for the elimination of violence against women - remains a focal point for public debate and initiatives	
Public Policy: Reports and Initiatives	Scottish Law Commission Report on evidence in cases of rape and sexual offences (Jul 83)							Guidance is published for police officers on dealing with Domestic Violence	Convention of Scottish Local Authorities (COSLA) agree to refuge provision target of 1 per 7500 population	
Policy Implementation							First Change Programme - an offender management programme for domestic abuse perpetrators	The 'specialist' police role of Domestic Violence Liaison Officer is introduced  Lothian Domestic Violence probation programme starts		
Case Law							Stallard v HMA - 1st conviction of marital rape - Sets precedent for Scotland			
Year	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992
Legislation										
3rd Sector Initiatives / Conferences					Scottish Women's Liberation Conference: <i>Working against Violence Against Women</i> 260-300 women and 150 children attend in Glasgow (12-13 Sep 87)					
3rd Sector Implementation	Rape Crisis receive funding for Women's Support Project to open in East End of Glasgow			Shakti Women's Aid was founded in Edinburgh, with a similar remit to Glasgow's Hemat Gryffe Women's Aid						
Academic / Media						Surviving Sexual Violence - Liz Kelly - introduces the concept of sexual violence as a continuum - and writes of a 'knowledge explosion' in this area (Sep 88)				

International / England & Wales	UN Declaration on the Elimination of Violence Against Women (Dec 93)	UK marks International Victims Day for first time	Beijing Declaration and Global Platform for Action (1995) calls on governments to take integrated measures to prevent and eliminate violence against women (Sep 95)	UK Govt publishes revised Victims' Charter for England & Wales	Scottish Devolution Referendum (Sep 97)  Protection from Harassment Act 1997 - provides for restraining orders in England & Wales (in force Sep 98)	Henry McLesh, Minister of State for Scotland in Westminster - announces that a Scottish Partnership on Domestic Abuse would be established, to be chaired by Anne Smith QC (Jun 98)  Human Rights Act 1998 (in force Oct 00)	Domestic Violence Cluster Court established in Leeds. The first in England and Wales		EU Council Framework Victims - imposes duty on Member States to ensure domestic legislation provides minimal rights and protections to victims in criminal cases (Mar 01)	Criminal Neglect: Victim Support report re needs of victims and witnesses in court  Justice for All - Home Office white paper on criminal justice system
Public Policy: Reports and Initiatives					Establishment of Judicial Studies Committee - formalised judicial training in Scotland  Hitting Home HM Inspectorate of Constabulary for Scotland (HMICS) report on Police Response to Domestic Violence - 13 specific recommendations for improvement		Scottish Parliament convened - First Minister Donald Dewar (May 99)  1st debate on Domestic Abuse in Holyrood (Sep 99)  Justice Minister announces review into law against stalking and the need for specific offence (Oct 99)  SPDA work programme published (Oct 99)	National Strategy to address Domestic Abuse in Scotland and Action Plan published (Jun 00)  Glasgow Violence Against Women Partnership starts	Scottish Strategy for Victims published (Jan 01)  Violence against Women Prevention Strategy (SE) - published (Oct 01)  First female Sol Gen appointed (Elish Angiolini) (Nov 01)  First Domestic Abuse Liaison Officers (DALOs) - Glasgow  First centrally-funded programme in Scotland (or UK) to build and refurbish refuge accommodation	
Policy Implementation				Appointment of first female high court judge		Scottish Partnership on Domestic Abuse established (Nov 98)	All Scottish police forces begin recording / collating domestic abuse incidents according to an agreed definition  Establishment of Domestic Abuse Service Development Fund - commitment of £18M by SG (Sep 99)  Scottish Parliament establishes Cross-Party Group on Men's Violence Against Women	National Group to oversee policy implementation on Domestic Abuse established - chaired by Justice Minister (Jun 00)	Pilot Drug Court - Glasgow Sheriff Court (Oct 01)	Drug Court established - Kirkcaldy (Aug 02)  Vulnerable Persons Database established in Strathclyde - back dated to 2001  Victim Liaison Office Pilot with PF offices in Hamilton and Dundee
Case Law		Gilmour v HMA - Potential for counter-allegation to constitute an admission and provide corroboration. Accused said to police "she stung me wia a stick"						Healy v Vannet - When the complainant retracted her statement alleging assault, sufficient evidence to corroborate the accused's admission was found from evidence at the locus, red mark on complainant's face and her distress	Smith v Donnelly - Breach of the Peace only established if reasonable chance of 'discoverability' (challenge for prosecution of private crimes)	
Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Legislation						The Scotland Act 1988 - legislation for the establishment of a devolved Scottish Parliament, tax varying powers, and the Scottish Government (then called the Scottish Executive) (in force from Nov 88-Apr 00)			Protection from Abuse (Scotland) Act 2001 - Powers of arrest to be attached to a civil interdict (in force Feb 02)	
3rd Sector Initiatives / Conferences		Children – Equality and Respect Scottish Women's Aid conference - the first time children are the focus					SWA march on Princess Street, Edinburgh calling for a new law against domestic abuse and for dedicated funding for women's groups prior to the first sitting of the new Scottish Parliament			
3rd Sector Implementation	Glasgow Women's Project starts (Maryhill) (Mar 93)						Please Listen project - children affected by domestic abuse designed and sent postcards directly to MSPs. Inspiration for Listen Louder, a three year project by SWA facilitating a direct conversation between government ministers and children and young people with experience of domestic abuse about the need for effective support services	Scottish Domestic Abuse helpline launched (Jun 00)	Secondment of Women's Aid Worker to SE	Listen Louder campaign launched by SWA - Resulted from research into children who had experienced domestic abuse who felt unheard
Academic / Media	First Scottish Crime and Justice Survey Anderson and Leach (1993) (The 1982 and 1988 British Crime Surveys incorporated Scottish data)					Marilyn McKenna murdered by her ex-partner - High profile crime with widespread media coverage (Sep 98)	Marilyn McKenna trial (Feb 99)  Shepard and Pence: 'Coordinating Community Response to Domestic Violence' - Recommend multi-agency approach (Sep 99)	Scottish Crime and Justice Survey - considered Domestic Abuse for the first time (Jun 00)	Marilyn McKenna retrial following successful appeal (Aug 01) - Reference to case made in Parliamentary debate on Protection from Abuse Bill  Stanko, E. The Day to Count: Reflections on a Methodology to Raise Awareness about the Impact of Domestic Violence in the UK (2001)	

International / England & Wales	<div>First MARAC - Wales (Apr 03)</div> <div>A New Deal for Victims and Witnesses – National Strategy to Deliver Improved Services, Home Office paper (Jul 03)</div>	<div>Megan's Law - Sex Offenders' Register in US</div> <div>Crown Court Witness Service available all courts</div> <div>HMIC/HMCPSI Inspection: Violence at Home - a Joint Thematic Inspection</div>	First Drug Court - England and Wales (Dec 05)	Rollout of 25 SDVCs in England & Wales (Apr 06)	Code of Practice for Victims of Crime (England and Wales) become law - replaced Victims' charter and first statutory rights for victims in England and Wales		<div>Victim Support 1st National Conference</div> <div>Palermo Protocol - UN Convention to suppress trafficking especially in relation to women and children</div> <div>Opuz v Turkey (Jun 09) - Prosecution held liable in breach of ECHR following death of domestic abuse victim where they had discontinued earlier proceedings at her request</div>	
Public Policy: Reports and Initiatives	<div>No Witness - No Justice established (Apr 03)</div> <div>The National Strategy to Address Domestic Abuse in Scotland (Sep 03)</div> <div>Announcement of VAW Service Development Fund</div>	ACPOS / COPFS - Jt Protocol on Dom Abuse		Drug Court funding extended for further 3 years	SG announce the Concordat agreement with COSLA (Nov 07)	<div>Scottish Law Commission: Report on Rape and Other Sexual Offences and Scottish Law Commission undertake to review Family Law (including violence against women)</div> <div>HMICS Thematic Report Recommended introduction of a national database of perpetrators and that police officers conduct victim risk assessments (Aug 08)</div> <div>National Domestic Abuse Delivery Plan for Children and Young People published - SG and COSLA (Jul 08)</div>	<div>A Partnership Approach to Tackling Violence Against Women in Scotland: Guidance for Multi-Agency Partnerships</div> <div>Safer Lives: Changed Lives - additional SG policy on domestic abuse (Jun 09)</div>	<div>1st thematic report on Victims by Inspectorate of Prosecution and HMICS (Oct 10)</div> <div>What does Gender have to do with violence against women? SG think-piece to complement Safer Lives: Changed Lives</div>
Policy Implementation	<div>Pilot Youth Court established - Hamilton (Jun 03)</div> <div>All local authorities have a multi-agency forum in place</div> <div>Inspectorate of Prosecutions in Scotland - established (Dec 03)</div>	<div>Youth Court starts- Airdrie</div> <div>Violence Against Women Service Development Fund established</div> <div>Domestic Abuse - Pilot Court starts in Glasgow (Oct 04)</div> <div>Roll out of VIA (formerly VLO)</div> <div>Caledonian Project starts - holistic model to address offending for those convicted of domestic abuse</div>	First MARAC - Glasgow	First female and first solicitor appointed as Lord Advocate			<div>First COPFS Domestic Abuse Unit</div> <div>MATAC and Domestic Abuse Task Force starts Strathclyde (Feb-Sep)</div> <div>Domestic Abuse Court and ASSIST extended to cover greater Glasgow</div> <div>Domestic Abuse Forum (policy/operational overview to increase public confidence in police response) started Strathclyde 2009, expanded nationally in 2013. Police-led and has 3rd sector criminal justice partners. Meets quarterly</div>	Cluster court starts in Ayr Sheriff Court (Jan 10)
Case Law							<div>Harris v HMA Breach of the Peace has a public element and utterances in a private conversation, even if they cause alarm, are not sufficient to</div>	<div>Nawazish Ali v HMA - Corroboration through complainant's distress, injury and broken mobile phone</div> <div>Cadder v HMA - questioning of suspects held to be incompatible with ECHR - led to a review of accused's rights and then the Carloway review on</div>
Year	2003	2004	2005	2006	2007	2008	2009	2010
Legislation		<div>Vulnerable Witnesses (Scotland) Act 2004 - Provision of special measures for children and vulnerable witnesses (in force at different stages during 05)</div>	<div>Prohibition of Female Genital Mutilation (Scotland) Act 2005 - Criminal offence of FGM in Scotland and also extra-territorial jurisdiction (in force: Sep 05)</div>	<div>Equality Act 2006 - Introduction of gender equality duty. A precursor to the 2010 Act which codified the law</div> <div>Family Law (Scotland) Act 2006 - Courts must specifically consider domestic abuse when making decisions re parental contact with children (in force May 06)</div>			<div>Sexual Offences (Scotland) Act 2009 - Statutory offence of rape and emphasis on lack of consent (in force Dec 10)</div> <div>Victims' Commissioner (Scot) Bill lodged - has not led to appointment</div>	<div>Criminal Justice and Licensing (Scotland) Act 2010 - S38 (threatening and abusive behaviour) (in force Oct 10)</div> <div>S39 (stalking) (in force Dec 10)</div>
3rd Sector Initiatives / Conferences		<div>Scottish Domestic Abuse Helpline - available 24/7</div>	<div>Diana Barren founded CAADA (Coordinated Action Against Domestic Abuse), now Safe Lives</div> <div>ASSIST visit Cardiff MARAC (Dec 05)</div>				<div>SWA - First Census on number of women in refuge and contacting a local Women's Aid group - Continued annually thereafter (Sep 09)</div>	
3rd Sector Implementation		<div>ASSIST Advocate Service launches - Strathclyde (SG funded) (Oct 04)</div> <div>SWA Annual Conference - COPFS and ACPOS sign Joint Protocol</div> <div>15 multi-agency local training consortia established across Scotland. Two NTS coordinators appointed to facilitate and monitor implementation, including one based at SWA (Oct 04)</div>	<div>Phoenix House opens in Orkney - every local authority now has a refuge (Dec 05)</div> <div>Safe Contact campaign launched by SWA to raise awareness of issues with child contact in instances of domestic abuse (Dec 05)</div>	<div>SWA start partnership with Queen Margaret University to develop a Continuing Professional Development (CPD) course: 'Gender Justice and Violence – Feminist Approaches'</div>				
Academic / Media	<div>The Glasgow Drug Court in Action: The First Six Months. Crime and Criminal Justice Research Programme Eley, S., Malloch, M., McIvor, G., Yates, R. and Brown, A. (2003)</div>	<div>Evaluation of Specialist Domestic Violence Courts/Fast Track Systems Cook, D., Burton, M., Robinson, A. and Vallely, C. (2004)</div>	<div>Barbara Kruger art exhibition across whole floor of Gallery of Modern Art: Don't Die for Love: Stop Domestic Violence. Highlighted news coverage of the court response to domestic abuse and was accompanied by billboard campaign in Glasgow Central Station (Apr-Sep 05)</div>	<div>The Operation and Effectiveness of the Scottish Drug Court Pilots McIvor, G., Barnsdale, L., Eley, S., Malloch, M., Yates, R. and Brown, A. (2006)</div>	<div>Evan Stark articulates domestic abuse as 'coercive control' in Coercive Control: The Entrapment of Women in Personal Life (2007)</div> <div>Coy et al. Map of Gaps Map of domestic abuse service provision in UK (repeated 2009)</div>	<div>Handling Domestic Abuse Cases - A Toolkit to Aid the Development of Specialist Approaches to Cases of Domestic Abuse - For SG Clare Connolly (May 08)</div> <div>Michael Johnson's articulates 'typologies of domestic abuse' in Johnson, M.P. A typology of domestic violence: intimate terrorism, violent resistance, and situational couple violence (2008)</div>	<div>Review of the Hamilton and Airdrie Youth Courts McIvor, G. (2009)</div>	<div>BBC documentary: 'Hitting Home' - filmed inside Domestic Abuse Court Glasgow (Oct 10)</div>

International / England & Wales	Istanbul Convention(VAWG &DV)	EU Directive on Victims' Rights (Nov 12)	First Victims' Commissioner appointed in England and Wales	Clare's Law introduced in England and Wales (Mar 14) (Domestic Abuse disclosure scheme)	EU directive on EU Protection law mutual recognition - deadline for national implementation and deadline mutual recognition provision in civil law	UK EU membership Referendum (Jun 16)	Talpis vs Italy(Mar 17) European Court of Human Rights found that Italy had breached ECHR by failing to protect a woman	UK Government published consultation on specific offence of domestic abuse for England and Wales (Mar-May 18)	Deadline for UK to withdraw from the EU / implementation period (Mar 19)	
	Sarah's Law - Child Sex Offender Disclosure Scheme, rolled out across England & Wales (Apr 11)		EU Framework Directive on mutual recognition of civil protection measures (Jun 13)	HMIC Report: <i>Everyone's Business: Improving Police Response to DV</i> - flagged flaws in police response	Serious Crime Act 2015 (S76) - offence of coercively controlling behaviour in England and Wales	Article 50 invoked - negotiations start on UK's withdrawal from the EU (Mar 17)	Likely that UK government will legislate on a specific offence of domestic abuse akin to that introduced in Scotland			
	EU Directive: European Protection Orders (criminal) - Mutual recognition of Scottish Non Harassment Orders in EU member states (Dec 11)		All police forces in England and Wales have Domestic Violence Protection Order policies in place	Modern Slavery Act 2015 - UK legislation relating to treatment of victims of human trafficking. Some parts relate to NI and Scotland	UN Convention on the Rights of the Child					
	Independence Referendum (Sep 14)									
Public Policy: Reports and Initiatives	Lord Carloway Evidence and Procedure Review: starts 17 Jan 11. Public consultation: Jul-Oct 12	Strategy for Justice in Scotland - SG policy outlining broad governmental commitment to improving justice (Sep 12)	Police Scotland established (Chief Const: Sir Stephen House)- Domestic Abuse cited as a top priority	Equally Safe published (Jun 14)	Carloway Review published (Mar 15)	Equally Safe updated version published (Mar 16)	Publication of Thomson QC's Review of Victim Care in the Justice Sector in Scotland (Jan 17)	SG announces funding of SCCIR research on how victims of rape and sexual assault experience the criminal justice process to court (May 18)		
	2nd thematic report on Victims by Inspectorate of Prosecution and HMICS (Nov 11)		Procurator Fiscal for Domestic Abuse appointed (Apr 13)	COPFS allocated additional funding of £2.6m to assist in the investigation and prosecution of domestic abuse and sexual offences cases	SG launches public consultation on a specific offence of domestic abuse (Mar 15)	Victims' Code for Scotland and Standard of Service for Victims (contains victim map) published (Mar 16)	Michael Matheson MSP (Justice Secretary) visited Icelandic children's house which is based on the Barnehus model in Norway (Aug 17)	SG announces £1.1M for COPFS and SCTS to improve communication with victims of sexual offences and reduce length of time for cases to come to court (Aug 18)		
			Scottish National Action Plan for Human Rights (2013-2017) - explicitly recognises VAW and DA as human rights issue		Lord Bonomy's review of Post- Corroboration Safeguards published (Apr 15)	SG announces additional funding of £665,000 (over two years) for Scottish Women's Rights Centre to fund a victim advocate and additional legal advice (Oct 16)	SLC tenth work plan: To consider aspects of family law relating to family violence (Dec 17-Jan 18)	COPFS announces £3.6M to recruit 140 additional permanent staff - a significant increase (Aug 18)		
Policy Implementation		Edinburgh Domestic Abuse Pilot Court starts (Feb 12) - not complete coverage	MATAC, Domestic Abuse Investigation Units (incorp DALOs), and DATF rolled out across Scotland	Introduction of Victim Strategy in all High Court sexual offence cases (May 14)	MARAC development officer appointed	MARAC coverage: 28 across Scotland (23 / 32 local authorities)		Work starts on 1st purpose built Justice Centre in Inverness. SG commit £30M. Build should complete by Q4 2019		
		Police Scotland start using DAQ and interim Vulnerable Protection Database (IVPD) rolled out (2012- 2013). Finished by Dec 13	DA to Licence and Violence Reduction Unit (Apr 13)	Edinburgh Domestic Abuse Pilot Court - roll out across city (Nov 14)	Disclosure Scheme for Domestic Abuse Scotland - rolled out nationally (Oct 15) after 6 month pilot	Stipendiary Magistrates abolished - moved to Summary Sheriffs (2016)				
			IDAA training courses starts (Q1 13)		COPFS accredited training for Domestic Abuse starts (May 15)					
Case Law				PF (Hamilton) v McNaught Highly publicised trial - vs ex-partner of Janice Galloway - domestic abuse, stalking and revenge pornography	Dreghorn v HMA Lord Carloway said of cross- examination, "right does not extend to insulting or intimidating a witness..."					
Year	2011	2012	2013	2014	2015	2016	2017	2018	2019	
Legislation	Domestic Abuse (Scotland) Act 2011 - criminal offence to breach civil interdict and simplifies procedure for civil NHO (in force Jul 11)		Police and Fire Reform (Scotland) Act 2012 - Establishes a single police force for Scotland - 1 Apr 13	Anti-Social Behaviour Crime and Policing Act 2014 - Key sections apply in Scotland. Criminalises forced marriage and offence to breach Forced Marriage Protection Order (in force Sep 14)	Courts Reform (Scotland) Act 2014 (Consequential Provisions No. 2) Order 2015 implemented new sections to the Criminal Procedure (Scotland) Act 1995 to ensure domestic legislation for mutual recognition of EU protection orders	Abusive Behaviour and Sexual Harm (Scotland) Act 2016 - intimate image abuse ('Revenge Porn') (in force Feb 17)		Domestic Abuse (Scotland) Act 2018 passed into law (in force Feb 18) - Third sector representatives and victims received standing ovation from MSPs and members of the public		
	Forced Marriage (Protection and Jurisdiction) (Scotland) Act 2011 - Creates civil protective order for those at risk of being/have been forced marriage (in force Feb 12)			Victims and Witnesses (Scotland) Act 2014 - 1st recognition of victims in the court process/special measures, deemed vulnerable, including victims of domestic abuse (in force Jan 14 - Sep 15)	Human Trafficking and Exploitation (Scotland) Act 2015 - Consolidated law in Scotland re trafficking (in force May 16)			Vulnerable Witnesses (Scotland) Bill 2018 - Additional measures for vulnerable witnesses to give out of courtroom		
3rd Sector Initiatives / Conferences				1st COPFS Conference on Domestic Abuse - Hampden Park, Glasgow (Sep 14)	Day of Action - SWA - Campaign to stop violence against women (Dec 15)	Speaking Out: 40 year oral history of Women's Aid in Scotland		Open letter from Rape Crisis Scotland to COPFS published - criticises shift in Crown policy to compel victims of sexual offences (ie adopt similar pro-prosecution policy as domestic abuse) (Mar 18)		
				Women and Children's Solicitor, Stirling District CAB established as part of Domestic Abuse Transitions Advice Project (Aug 14)						
3rd Sector Implementation		Extension of ASSIST advocacy service provision to 12 local authority areas	Roll out of additional ASSIST advocacy service to 12 local authority areas - complete		Violence against Women Joint Strategic Board set up to implement delivery of the Equally Safe action plan		SWA and COSLA produce guide book: Good Practice in Commissioning Specialist Domestic Abuse Services (Sep 17)			
		SG funding agreement results in ASSIST co-location with police					SWA in partnership with the Children and Young People's Commissioner, launch Power Up/Power Down, a project which asked 27 children and who experienced domestic abuse to talk about what they think needs to change about the current system in Scotland			
Academic / Media	The Glasgow Drug Court in Action: The First Six Months, Crime and Criminal Justice Research Programme Eley, S., Malloch, M., McIvor, G., Yates, R. and Brown, A. (2003)		Bill Walker, MSP convicted of 23 charges of assault and breach of the peace against his 3 ex-wives and step- daughter (Aug 13)	Michael Johnson visits Scotland and speaks to police and prosecutors about typologies of domestic abuse (Feb 14)	Dual Reports of Domestic Abuse made to the Police in Scotland Brooks and Kyle (May 15) (links to Joint Protocol)	Evaluation of Caledonia system: Analysis of a programme for tackling domestic abuse in Scotland Ormston et al (Nov 16)	#MeToo goes viral on social media (following allegations against Harvey Weinstein) as a movement allowing women to identify publicly as victims of sexual assault and illustrate the scale of the problem. Motto is "empowerment through empathy" (Oct 17)	TimesUp movement founded by Hollywood actresses to encourage gender equality and end to harassment in the workplace (Jan 18)	Publication of Brooks, Burman and Bradley 'Justice Journeys: Informing Policy and Practice through Lived Experience.' (SG funded) (Feb 19)	
			Evan Stark visits Scotland and speaks to police and prosecutors about domestic abuse as coercive control (Oct 13)		Guardian headline - 'Scotland's Got it Right on Domestic Abuse - it takes is seriously' (Mar 15)					
					Sunday Mail Front Page publication of photos of domestic abuse perpetrators (Apr 15)					

## APPENDIX TWO: Interview Plan – Support / Advocacy Workers

### **Introduction**

- who I am; what the research is about; why I think it is important and what I perceive to be the benefits
- Consent: explain the consent form; participant can withdraw at any time
- Recording: explaining why would like to record and what I will do with the data
- Questions: anything that the participant would like to clarify/ask
- Consent: return to consent and confirm if participant wishes to consent

### **Role**

- Explore what their role involves within WA/ASSIST; how long they have been in post and a typical day
- Explore their relationship with people they support: how long they typically work with one person; what they think about the way support is provided; anything they would change
- What works: general exploration of what they consider is effective in providing support to women

### **Equally Safe/Victims and Witnesses (Scotland) Act 2014**

- Extent of understanding of the Government policy and legislation
- Impact on daily routine

- Perception of the needs of those they support: are they improved/met by the legislation?
- Extent of knowledge of the policy: how is it perceived? Valuable?
- How do they consider victim experience could be improved?

### **Multi-Agency Working**

- Who are key partner agencies?
- Explore how contact between agencies works and level of multi-agency working
- Examine who the workers would like to be working with

### **Closing**

- Following discussion, may wish to clarify some points in relation to their role and their interaction with victims.
- Opportunity for participant to raise other relevant points
- Opportunity for participant to ask questions/seek clarification

## APPENDIX THREE: Interview Plan - Victims

### **Introduction**

- who I am; what the research is about; why I think it is important and what I perceive to be the benefits
- Consent: explaining the consent form and that can withdraw at any time
- Recording: explaining why I would like to record the interview and what I will do with the data
- Questions: is there anything that the participant would like to clarify/ask
- Consent: return to consent and confirm if participant wishes to consent

### **Getting to Know the Participant**

- Closed questions, which are easy to answer and get the participant used to talking.
- Relationship with the perpetrator and how long it lasted; if they have any children and how old they are (but no other details which might identify them, esp no names)

### **Calling the Police**

- Have you ever called the police? (if not, who did? How did this make you feel?)
- Why did you call them?
- What did you hope they would do?
- What did they do?
- What support did you have?



## **Court**

- What agency support? What was their role? Was it helpful?
- Explore what happened when the case went to court/implications
- Supportive of case going to court?
- What support available at court/assessment of that?
- How did your experience of court compare with expectations?
- What helped/would have helped/made a difference to experience
- Implications for child contact

## **Afterwards**

- Would you phone the police again?
- Impact of calling police/court case on life now
- Exploration of main needs
- Exploration of awareness of rights within criminal justice process
- Discussion around support/steps in process which helped and what was challenging

## **Closing**

- Following discussion, may wish to clarify some points in relation to their role and their interaction with victims.
- Opportunity for participant to raise other relevant points
- Opportunity for participant to ask questions/seek clarification

## APPENDIX FOUR: Consent Forms



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### CONSENT FORM

**Title of Project:** The Challenge of Criminalisation: Perception and Reality for Victims of Domestic Abuse

**Name of Researcher:** Emma E. Forbes. (Supervisors: Professor Michele Burman and Dr Oona Brooks)

#### Basic consent clauses, statement format

I confirm that I have read and understood the Plain Language Statement/Participant Information Sheet for the above study and have had the opportunity to ask questions.

I understand that my participation is voluntary and that I am free to withdraw at any time, without giving any reason.

#### Consent on method clause

I consent / do not consent (delete as applicable) to interviews being audio-recorded.  
(I acknowledge that copies of transcripts will be returned to participants for verification.)

#### Confidentiality/anonymity clauses

I acknowledge that participants will be referred to by pseudonym.

I agree / do not agree (delete as applicable) to take part in the above study.

#### Basic consent clause, tick box format

I agree to take part in this research study ☐

I do not agree to take part in this research study ☐

#### Signature Section

Name of Participant ..... Signature .....

Date .....

## APPENDIX FIVE i: Plain Language Statement (workers)



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### Plain Language Statement – Support/Advocacy Workers

#### Study title and Researcher Details

**TITLE:** The Challenge of Criminalisation: Perception and Reality for Victims of Domestic Abuse

**RESEARCHER:** Emma Forbes is a PhD student at the Scottish Centre for Crime and Justice Research within the University of Glasgow. She is also a Senior Procurator Fiscal Depute within Crown Office and Procurator Fiscal Service. This research is carried out by Emma in her capacity as a PhD research student and is wholly separate from her role as a Prosecutor.

You are invited to take part in a research study. Before you decide it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with others if you wish. Please ask me if there is anything that is not clear or if you would like more information. Take time to decide whether or not you wish to take part.

Thank you.

#### What is the purpose of the study?

The purpose of this study is to improve understanding of domestic abuse in Scotland. Specifically, I want to understand what prompts women experiencing abuse to phone the police and to learn more about the court process from their point of view. Does the law help women going through the court process? Could changes to the law improve their safety and better support them?

To do this, I would like to speak directly to women who have experienced abuse, reported it to the police and gone through the court process. I would also like to speak to the people who provide support to women through this process.

My aim is to listen to the experiences of individual women and those who support them and record them in my research.

**Why have I been chosen?**

You have been chosen because of your expertise and experience in providing support to women who have experienced domestic abuse.

**Do I have to take part?**

No. If you feel that you would rather not take part, then you do not need to. If you decide to take part, you can still change your mind and withdraw at any time. You can choose not to answer some questions.

**What will happen to me if I take part?**

I will arrange a mutually convenient time to come and speak to you at your place of work and will ask you questions about: your role as an advocacy worker and what your typical day involves; what you have learned from talking to victims of trauma; and how you work in partnership with other organisations.

**Will my interview be recorded?**

I will discuss this with you prior to the start of the interview. I hope to audio-record the interview, as this is the most accurate way to record what you say. We will talk about this before the interview starts and I will only record the interview if you are happy for me to do so.

**Will my taking part in this study be kept confidential?**

All information about you will be confidential. Once I have completed my research, I am happy to send you a copy or a summary so that you can see how I used the information you gave me. If you say anything that I would like to quote directly, I will contact you first to ask you if that's ok. I will not use your real name and there will be no way of identifying you from the research.

All of my written notes will be kept in a secure, locked cabinet. If you give permission for the interview to be recorded, it will be kept in a password encrypted, personal computer.

**Please note that assurances on confidentiality will be strictly adhered to unless evidence of wrongdoing or potential harm is uncovered. In such cases the University may be obliged to contact relevant statutory bodies/agencies.**

**What will happen to the results of the research study?**

I will write up the conclusions of my research for my thesis. I hope that I will then use what I have learned from talking to you to inform how I plan and carry out interviews with victims of domestic abuse.

**Who is organising and funding the research?**

I am in receipt of a scholarship from the School of Social and Political Sciences at the University of Glasgow to carry out a PhD on victims of domestic abuse and their experiences of the criminal justice process.

**Who has reviewed the study?**

This study has been reviewed by my supervisors at the Scottish Centre for Crime and Justice Research.

**Contact for Further Information**

If you have any concerns regarding the conduct of this research project, you can contact Professor Michele Burman, research supervisor. Email: [Michele.Burman@glasgow.ac.uk](mailto:Michele.Burman@glasgow.ac.uk) or Oona Brooks, research supervisor. Email: [Oona.Brooks@glasgow.ac.uk](mailto:Oona.Brooks@glasgow.ac.uk) or Dr Muir Houston, Ethics Officer, College of Social Sciences. Email: [Muir.Houston@glasgow.ac.uk](mailto:Muir.Houston@glasgow.ac.uk)

## APPENDIX FIVE ii: Plain Language Statement (Women)



University  
of Glasgow

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College of Social  
Sciences

### Plain Language Statement - Women

#### Study title and Researcher Details

**TITLE:** The Challenge of Criminalisation: Perception and Reality for Victims of Domestic Abuse

**RESEARCHER:** Emma Forbes is a PhD student at the Scottish Centre for Crime and Justice Research within the University of Glasgow. She is also a Senior Procurator Fiscal Depute within Crown Office and Procurator Fiscal Service. This research is carried out by Emma in her capacity as a PhD research student and is wholly separate from her role as a Prosecutor.

You are invited to take part in a research study. Before you decide it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with others if you wish. Please ask me if there is anything that is not clear or if you would like more information. Take time to decide whether or not you wish to take part.

Thank you.

#### What is the purpose of the study?

The purpose of this study is to improve understanding of domestic abuse in Scotland. Specifically, I want to understand what prompts women experiencing abuse to phone the police and to learn more about the court process from their point of view. Does the law help women going through the court process? Could changes to the law improve their safety and better support them?

To do this, I would like to speak directly to women who have experienced abuse, reported it to the police and gone through the court process. I would also like to speak to the people who provide support to women through this process.

My aim is to listen to the experiences of individual women and those who support them and record them in my research.

### **Why have I been chosen?**

You have been chosen because of your experiences of the court process and the fact that you have an important story to tell.

### **Do I have to take part?**

No. If you feel that you would rather not take part, then you do not need to. If you decide to take part, you can still change your mind and withdraw at any time. You can choose not to answer some questions.

### **What will happen to me if I take part?**

We will arrange a mutually convenient time to meet at the offices of ASSIST (or another suitable place) and will meet for between half an hour and an hour. I will ask you about: who you are and why you agreed to take part in this research; if you have any children (but I will not ask their names or any personal details about them, beyond their age, unless you want to tell me); when and why you first called the police; what happened when you called the police; what happened to you during court and how you felt about going to court and giving evidence; and what would have helped you during the process.

### **Will my interview be recorded?**

I will discuss this with you prior to the start of the interview. I hope to audio-record the interview, as this is the most accurate way to record what you say. We will talk about this before the interview starts and I will only record the interview if you are happy for me to do so.

### **Will my taking part in this study be kept confidential?**

All information about you will be confidential. Once I have completed my research, I am happy to send you a copy or a summary so that you can see how I used the information you gave me. If you say anything that I would like to quote directly, I will contact you first to ask you if that's ok. I will not use your real name and there will be no way of identifying you from the research.

All of my written notes will be kept in a secure, locked cabinet. If you give permission for the interview to be recorded, it will be kept in a password encrypted, personal computer.

**Please note that assurances on confidentiality will be strictly adhered to unless evidence of wrongdoing or potential harm is uncovered. In such cases the University may be obliged to contact relevant statutory bodies/agencies.**

### **What will happen to the results of the research study?**

I will write up the conclusions of my research for my thesis. Once I have finished the research, I hope to be recognised as an expert on the law relating to domestic abuse. I hope that this will give me a voice so that some of my findings will be published and that lots of people read it and understand how we can be better at investigating and prosecuting domestic abuse, in a way that is supportive and sensitive to victims.

### **Who is organising and funding the research?**

I am in receipt of a scholarship from the School of Social and Political Sciences at the University of Glasgow to carry out a PhD on victims of domestic abuse and their experiences of the criminal justice process.

### **Who has reviewed the study?**

This study has been reviewed by my supervisors at the Scottish Centre for Crime and Justice Research.

### **Contact for Further Information**

**If you have any concerns regarding the conduct of this research project, you can contact Professor Michele Burman, research supervisor. Email: [Michele.Burman@glasgow.ac.uk](mailto:Michele.Burman@glasgow.ac.uk) or Oona Brooks, research supervisor. Email: [Oona.Brooks@glasgow.ac.uk](mailto:Oona.Brooks@glasgow.ac.uk) or Dr Muir Houston, Ethics Officer, College of Social Sciences. Email: [Muir.Houston@glasgow.ac.uk](mailto:Muir.Houston@glasgow.ac.uk)**

What do I do if I would like to take part?

You can ask your advocacy worker at ASSIST to pass on your details to me and I will be in touch or you can email me directly at: [eeforbes@hotmail.co.uk](mailto:eeforbes@hotmail.co.uk)



## APPENDIX SIX: Copy of the RIC (risk identification checklist)

<b>Risk Identification Checklist</b>				
<b>Date</b>				
<b>Please type answers and additional information in red</b>		<b>Y</b>	<b>N</b>	<b>DK</b>
<b>1. Has the current incident resulted in injury? (Please state what).</b>  <i>How have the children reacted to what happened?</i>				
<b>2. Are you very frightened?</b>  Add comment:				
<b>3. What are you afraid of? Is it further injury or violence? Please give an indication of what you think (accused's name) might do and to whom, including children?</b>  Add comment:				
<b>4. Do you feel isolated from family and friends i.e. does (name) try to stop you from seeing friends/family/others?</b> Add comment:  <i>Have [X's actions] isolated the children as well? How?</i>				
<b>5. Are you feeling depressed or have suicidal thoughts?</b>				
<b>6. Have you separated or tried to separate from (name) in the past year?</b>				
<b>7. Is there conflict over child contact?</b>  <i>Can you tell me a bit about child contact?</i>  <i>How does [X] support or undermine your parenting?</i>  <i>Do you have any concerns about [X's] behaviour towards the children when you aren't around?</i>				
<b>8. Does (name) constantly text, phone, contact, follow, stalk or harass you?</b> Expand to identify behaviour and whether client believes this is to intimidate.				
<b>9. Are you pregnant or have you recently had a baby? (Explain this is a time that abuse often escalates).</b>  <i>Has [X] supported you throughout your pregnancy?</i>				
<b>10. Is the abuse happening more often?</b>				
<b>11. Is the abuse getting worse?</b>				
<b>12. Is (name) controlling and/or excessively jealous? E.g. who you see, being 'policed' at home, telling you what to wear? Consider honour based violence and specify.</b>  <i>Has [X] ever used or threatened to use the children in any way to control or hurt you?</i>  <i>Who makes the decisions around issues relating to the children?</i>				
<b>13. Has (name) ever used weapons or objects to hurt you?</b>				

What?			
<b>14.</b> Has (name) ever threatened to kill you or someone else and you believed them? Who? You?  Your children? <i>Has [X] made these threats in front of the children or are they aware of the threats?</i>  Other? (specify)			
<b>15.</b> Has (name) ever attempted to strangle/choke/suffocate/drown you?			
<b>16.</b> Does (name) do or say things of a sexual nature that make you feel bad or that physically hurt you (Or someone else? Specify)  <i>Have the children ever seen or heard [X] do this?</i>			
<b>17.</b> Is there any other person who has threatened you or who you are afraid of? (Specify who and why. Consider extended family)			
<b>18.</b> Do you know if (name) has hurt anyone else?  Children? <i>Have the children ever been hurt, accidentally or on purpose, as a result of [X's] behaviour?</i> Siblings? Other family members? Other? (specify)			
<b>19.</b> Has (name) ever mistreated an animal or the family pet?			
<b>20.</b> Are there are any financial issues? E.g. Are you dependant on (name) for money or have they recently lost a job or any other financial issue?			
<b>21.</b> Has (name) had problems in the past year with drugs, (prescription or other), alcohol or with mental health which have led to problems leading a normal life? Drugs? Alcohol? Mental Health?			
<b>22.</b> Has (name) ever threatened or attempted suicide?			
<b>23.</b> Has (name) ever broken bail conditions or an interdict preventing them from contacting or approaching you? Specify?			
<b>24.</b> Do you know if (name) has ever been in trouble with the police or has a criminal record? Domestic abuse? Sexual violence? Other violence? Other?			
<b>Visible High Risk: Total</b>			
<b>Discussed Historical Unreported Incidents Date:</b> <b>Clients Views:</b>			

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